Tentativa Theológica

J. P. Parkinson, D.C.L.

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TENTATIVA THEOLOGICA.

BY THE REV. E. H. LANDON, M.A.

In one thick volume, 12mo. cloth, price 12s.

A MANUAL OF COUNCILS OF THE HOLY CATHOLICK CHURCH, comprising the substance of the most remarkable and important Canons, alphabetically arranged.

TENTATIVA THEOLOGICA.

EPISCOPAL RIGHTS

AND

Ultra-montane Usurpations.

BY

FATHER ANTONIO PEREIRA

DE FIGUEREDO,

Priest and Doctor of Lisbon.

TRANSLATED FROM THE ORIGINAL PORTUGUESE, WITH NOTES,
AND SOME ADDITIONAL MATTER,

BY THE

REV. E. H. LANDON, M.A.,

AUTHOR OF A "MANUAL OF COUNCILS."

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MDCCCXLVII.

Ecclesia dicitur Una ab unitate Capitis Essentialis, scilicet Christi, Qui non moritur: et ab unitate Fidei et Caritatis: et non ab unitate capitis accidentalis. Stat virum aliquem Papæ contradicere, et esse de Unitate Ecclesiæ.

John Major.

TO THE

REVEREND WILLIAM HODGE MILL, D.D.,

LATE PRINCIPAL OF BISHOP'S COLLEGE, CALCUTTA,

CHAPLAIN TO HIS GRACE THE ARCHBISHOP OF CANTERBURY,

AND

RECTOR OF S. MARTIN, BRASTED,

The following Work is Dedicated,

AS A

SLIGHT ACKNOWLEDGMENT OF BENEFIT RECEIVED,

AND INSTRUCTION DERIVED,

FROM HIS WRITINGS.

NOTICE.

The Translator of the following work being absent from England, the friend who has revised the sheets for the press, has been requested to prefix a few remarks on its plan, and bearing on the controversy between the Roman and English Churches.

INTRODUCTION.

Feb 212.
1847.

ALTHOUGH the following work is little, if at all, known in England, at the time of its first appearance (1766,) it created an extraordinary sensation throughout the whole of the Roman Communion, and has retained a high reputation to this day. It may justly be regarded as the death-blow to Ultra-montanism in Spain and Portugal; and, though burnt at Rome, was never effectually answered. Its general aim is to prove that an absolute control over his Diocese is vested, by Divine Right, in every Bishop; and it is sufficient praise to the writer to say that he was a worthy successor of Gerson and Bossuet. Pereira is the last great Cismontane Divine whom Europe has produced.

In addition to the intrinsic excellence of the work, it is hoped that it will be found peculiarly interesting and valuable in the present circumstances of our Church. It may be a source of comfort and increased confidence to some, to find such a subject so treated by a Priest of the Roman Communion; whose remarkable powers were universally acknowledged, and whose memory is to this day venerated throughout the Church of Portugal.

Its especial value may, perhaps, lie in the testimonies which the author adduces from Theologians of the fourteenth, fifteenth, ixteenth and seventeenth centuries, with whose writings English Divines are so little acquainted. The names of Cusa, Soto Banhes, Aurelius, Barboza, Marca, Gerbais, Barthelius, Gibert, and others, will be found constantly to occur in these pages.

A few years after the publication of the *Tentativa,* Pereira put forth an Appendix, supporting by further arguments and authorities the principles and positions laid down in his original work. Some extracts from this book will be found in the Notes: of some I shall avail myself in this Preface. The authorities, which Pereira only quotes in the Latin, are in the present volume translated in the text, and themselves placed in the notes. Most of the references have been verified; and a few additional notes added, where the subject seemed to demand it.

The Translator has to express his great obligations to the kindness of the Rev. W. H. Mill, D.D., for his valuable advice and assistance in the correction of errors, and the explanation of some difficult passages in the authors cited. He is also indebted to Canon Antonio Pestana, Rector of the Seminary of Funchal, for his placing, in the most obliging manner, the Library of that College at his disposal.

It is hoped that the following volume may be thought a worthy companion of the Apology of Courayer:—the one defending the reality, the other the rights of our Bishops. Before pointing out the manner in which it may conduce to that end, it may be desirable to give a sketch of the life of Father Antonio Pereira; for which purpose I shall principally make use of a memoir written by myself for the *British Magazine,* of August, 1844.

Antonio Pereira was born on the 14th of February, 1725, in the town of Maçao, in Estremadura. He was educated under the Jesuits, in the college at Villa Viçosa, where he attained great proficiency in the Latin language and in music. On leaving that seminary, he was appointed organist in the abbey-church of Santa Cruz at Coimbra; but finding that his situation did not give him sufficient time for study, and being desirous of entering on the religious life, he, in the twentieth year of his age, took the vows in the Oratory of the Holy Spirit at Lisbon, where he devoted himself to the study of philosophy and of theology. He was soon favourably known as a grammarian, by a collection of Latin exercises, which he published in 1751; but it was not till the next year that his name became famous, by the appearance of his '*New Method,*'[1] a work which obtained

1 "Novo Methodo da Grammatica Latina, para o uso das Escolas da Congregação do Oratorio na Real Casa de N. S. das Necessidades. Lisboa: 1752."

the same place in Portugal that Lily's, the original of the Eton Latin Grammar, long held among ourselves; and which passed through ten editions in the lifetime of Pereira. While spreading his reputation, however, it also raised him up a host of enemies, particularly among the Jesuits, between whom and our author an inveterate enmity seems to have existed from the very first. The two following years were employed by Pereira in the defence of his '*New Method*,' and in other grammatical works of less importance, till the ruin of his monastery, in the fearful earthquake of 1755, obliged him to transfer his abode to the House *das Necessidades*. He found time, in the following year, to bring out, in Latin and Portuguese, a *Commentary on the Earthquake*, and this work was translated into English, and published in London, in 1757.

The uninterrupted studies of Pereira had injured his health. Ordered by his physicians to Viseu, the Torquay of Portugal, he acquired the friendship of Julio Francisco de Oliveira, the Bishop of the Diocese; but this Prelate, whether through envy, or from whatever other cause, having treated Pereira with coldness, the latter removed to Oporto, whence, with renovated health, he returned to Lisbon in 1759. He now applied himself with fresh ardour to his studies, and in the course of the same year brought out his *Elements of Rhetorical Invention and Elocution*, a work which does not appear[1] to have attracted particular notice.

The partisans of the Jesuits had, at this period, nearly contrived to embroil him with the Court; but his honesty and plain dealing enabled him, under Providence, to defeat their plots; and he shortly afterwards came forward in the character for which he was best qualified, that of a theological historian. His commentary on the Fifth, Sixth, and Seventh Œcumenical Councils appeared in 1762; that on the Council of Nicæa, in 1763: and that on the Second and Third Œcumenical Synods, in 1765. These publications marked him out as the first theologian that Portugal had ever possessed, and an opportunity shortly afterwards offered itself for the display of his amazing erudition.

A difference having arisen between the Roman See and the Court of Lisbon, Don Joseph I. had, in the month of August,

[1] Since the Abbé Barbosa affirms that it never was published, and another author has followed him in this mistake.

in the year 1760, forbidden his subjects, under heavy penalties, to have recourse to the Pope under any circumstances whatsoever. Three or four years passed, and the inconveniences resulting from this step began to be severely felt. The Portuguese nobility were already so closely connected among themselves by intermarriages, that it was scarcely possible to contract a new marriage out of the prohibited degrees, and for this purpose applications had, of course, been continually made to Rome. As such a proceeding was now impossible, marriages were postponed, or broken off, and, while the quarrel lasted, there seemed no possibility of placing things on the ancient footing. The discontent was great; and unless the Court was prepared to concede to Rome the matter in question, it was evidently necessary to find some remedy for the distress into which the aristocracy had been thrown. In this emergency, the King, and the equally able and unscrupulous Pombal, turned their eyes on Pereira. His learning was not his only recommendation. He was known to entertain opinions diametrically opposed to Ultramontane views; and if any divine could assist in the dilemma, it was clearly he. He accepted the commission of writing on the subject, and undertook to prove that every Diocesan Bishop had, in cases where recourse to Rome was impossible, the full and canonical right of granting dispensations. His work was modestly entitled *Tentativa Theologica*, a "Theological Essay." But in the meantime he composed, and on the 15th of November defended, in the presence of a vast body of auditors, a thesis *On the Supreme Power of Kings over Ecclesiastics*. This work was received with universal applause, was reprinted at Paris and Leipsic, was translated into French, and appended to the Treatise of the Abbé Fleury, *On the Liberties of the Gallican Church*, and finally appeared in an Italian version at Venice. The latter translation gave rise to a singular mistake. One Wratislaw Sonse,[1] imagining the original work to have been in Portuguese, translated it from the Italian into the Latin; and this re-translation actually appeared at Olmutz in 1774.

Meanwhile Pereira was bringing his *Tentativa* to a conclusion. The court theologians and ecclesiastical licensers, evidently, while they admired its learning, trembled at its boldness

[1] Or Monse, according to others.

and the parade of licence and re-licence, annotated "*censuras*," and illustrated "*informações*," under which it at length issued from the press, shows the light in which it was viewed. The last licence, issued when every sheet was struck off, and therefore probably about a fortnight before publication, is dated October 16, 1766. The work was received with one universal burst of applause; and whether we consider its prodigious learning, its masterly arguments, its admirable temper, or its elegant style, that applause was deserved. The sensation which it excited was not confined to Portugal. It was read with respect in France, in Germany, in Tuscany, and in Lombardy. It was translated into Italian, although incorrectly, and into Latin; and both these versions were published at Venice. At Lyons, a French translation appeared. Pereira, finding that his work was likely to spread over Europe, and dissatisfied with the fidelity of his translators, published in 1769, a Latin translation, under the title of *Tentamen Theologicum*.[1] The Portuguese work was in a second edition before the close of 1766, and became, as it is now, a work with which no parish Priest of any pretensions to ecclesiastical knowledge is unacquainted. As might be expected, the See of Rome was highly indignant, and the book was publicly burnt.

The *Tentativa Theologica* received several answers: and Pereira, when urged to reply to these, was in the habit of saying, "Does the last word necessarily imply a right cause?" Gabriel Galindo, however, a theologian of Madrid, published a *Censura* of the *Tentativa*, which our author deemed worthy of a reply, and he accordingly produced one both in Latin and Portuguese, in the course of 1768. Pereira was a fair controversialist, and to prove that he did not misrepresent his opponent's arguments, he was at the trouble of translating them into Portuguese, and publishing them together with his own answer. This work of Pereira's was translated into Spanish, and the king of Spain banished Galindo to a distance of forty leagues from Court. In the meantime a German translation of the *Tentativa* was published at Frankfort; and, at a later period, one was advertised as about to appear in Spanish; whether it was actually pub-

[1] With this work, however, I am not acquainted; and it may be proper to state that the following translation is made from the first Portuguese edition.

lished I know not. Besides an *Appendix* to his *Tentativa*, Pereira shortly afterwards found time for a *Life of Gerson*, a divine for whom he always entertained the highest veneration; for a second work on his writings and doctrine; and for a dissertation on the proceedings of S. Gregory VII. against the Emperor Henry.

The king, in 1768, raised Pereira to the honourable post of ordinary deputy of the royal board of censorship; and, in the following year, to an office, which we may call that of translator-in-chief to the secretary of state for foreign affairs.

Perhaps no man was ever engaged in more arduous or more multifarious occupations than was Pereira at this time. Besides his government employment, he was engaged by Don Gaspar, Archbishop of Braga, and Primate of all the Spains, on a projected reform of the breviary of his Church, which, however, was never carried out; he was busy on several historical works, of which some, such as the *Lusitania Sacra*, are of great value and importance. He did not forget his early fondness for music, but composed several motetts, which are still preserved: he was translating several Portuguese documents and laws into Latin, and he was engaged on several other works, which have not yet seen the light. We find him, in the year 1771, at his native Maçao, and in communication with Pombal, on the subject of certain Latin translations. Two years before this period, he had completed the most laboured of all his works, his *Demonstração Theologica;* in which he proves the right of metropolitans, even where there is no impediment to having recourse to Rome, to confirm their suffragans elect. This, it will be observed, is a step beyond the *Tentativa*, since, in the latter, Pereira strictly confined his remarks to the case of a rupture with Rome. This work had nearly led to very important consequences. In the year 1776, the Pope demurred to passing his bulls of confirmation for the "patriarch" elect of Venice. The senate of that city gave directions that the *Demonstração* should be translated into Italian, and were determined to act on its principles did they not obtain their demands.

One might have thought that these numerous occupations were more than sufficient for the time and strength and learning of any man; but Pereira was, at the same period, carrying on

the most useful and most laborious of all his works, his translation of the Holy Scriptures into Portuguese. He had completed the New Testament as early as 1772; but it was not sent to the press till six years later. The Psalms followed, and then the rest of the Bible in order. The whole edition was completed by 1790, and consists of twenty-three volumes in duodecimo. The version is from the Vulgate, and it is accompanied with many useful notes, partly original, partly from the best commentators, more especially Calmet. Before the last volumes of the first edition were printed, the first of the second edition were in course of publication; and Pereira, in the meantime, with incredible labour, so entirely corrected his version, that the third edition may be considered a new translation. Two volumes only of this appeared in the lifetime of the translator; and it was not completed till twenty years after his death. It is in quarto; the Latin text is given as well as the Portuguese version, the notes are much more numerous, and a most valuable dissertation on ancient and modern versions of the Scriptures is prefixed to the whole. To praise the beauty, the clearness, the fidelity of this translation, would be superfluous to the Portuguese scholar, and useless to others.

But to return to the regular course of events. The years 1774 and 1775, are fondly dwelt on by Portuguese writers as one of the most brilliant epochs of their country's history; the completion of New Lisbon and the inauguration of the equestrian statue gave ample employment to the genius of Pereira. On the erection of the Royal Academy of Sciences, he was chosen a fellow in the class of Portuguese literature; and immediately applied himself to the composition of several dissertations on the ancient history and language of his native country.

In 1785, finding his health impaired, Pereira resolved to retire from court, where, since his elevation to his public employments, he had resided, and to take up his abode, for a second time, in the monastery *das Necessidades*. At this time he published a curious work on the Miraculous Apparition of CHRIST to the King Alphonso, before the battle of Campo d'Ourique, with a collection of parallel examples, and an Account of the Ambassadors, Prelates, and Doctors of Portugal who assisted at General Councils.

After the year 1792, the infirm state of Pereira's health allowed him to make no laborious efforts; and he was thenceforward principally engaged in the correction of the third edition of his Bible, and on that of his *Lusitania Sacra*. We find him complaining, in a letter of the second of April, 1796, of perpetual hypochondria, a disorder to which he had always been subject. An attack of paralysis obliged him to try the baths of Caldas, but without obtaining any alleviation. He returned to Lisbon in a hopeless state; and for the last year of his life could hardly be said to exist. On the night of the tenth of August, 1797, he received extreme unction. The fathers who assisted him having heard him express a wish to die in the habit of S. Philip Neri, proposed, on the following day, his admission into that congregation, and the habit was at once given him by its principal. On the fourteenth of August, a little after noon, he resigned his spirit into the hands of his CREATOR.

Pereira's appearance was not prepossessing; of the middle size, he was ungainly, ill-made, and had red hair; but his conversation was eminently charming. Sixty-eight of his works were printed, two were lost in the earthquake, sixty-nine remained in manuscript at his death, of which one or two have since been printed: among these is his translation of the Apocrypha. And such is a brief account of the greatest Theologian that Portugal has produced.

And now to turn our attention to the present work, and to its bearing on the controversy between ourselves and Rome. It seems perfectly clear that, whatever might have been Pereira's judgment on our present position, the Principles which he has laid down do, in effect, defend that position. Let us see in what manner this seems to follow.

He assumes that the Primacy of the Church is attached by Divine Right to the Chair of S. Peter. I am well aware that many among us would not admit this Doctrine: they would agree in owning that, by Ecclesiastical Custom, the Primacy had been so attached; but this would be the extreme bound of their concession to Papal Authority. Nevertheless, if we trust our cause to Pereira, the situation of the English Church at this moment may still be well defended. Our defence, as managed by him, consists of two heads. I. Allowing the Primacy to be, by Divine Right, in the Successor of S. Peter, it is not clear that

the Roman Pontiff is, *by Divine Right*, the Successor of S. Peter. II. Granting that he is, we cannot give him the Primacy, because he refuses it, and will have the Supremacy, or nothing.

I. If the Primacy of S. Peter's Successor be of Divine Right, Pereira labours hard to show, and, I think, does successfully show, that the Bishop of Rome is not held by the Church as, by Divine Right, S. Peter's Successor. He quotes Dominic Soto, on the Fourth of the Sentences, who thus writes: "Whether the highest dignity be *jure divino* in the Roman Church, so that the Head of the Church and the Bishop of Rome are, *jure divino*, one and the same person, is not so certain as some think." "That the Roman Pontiff," says Dominic Banhes, "is, *jure divino*, the Successor of S. Peter, is not of the Catholic Faith, but [merely] a very probable opinion." Nicolas de Cusa goes further, and teaches, that if the Archbishop of Trèves were elected by the Church to be its head, he would be more properly S. Peter's Successor than the Bishop of Rome.

Such are the authorities here cited by Pereira: the subject being of importance, the reader may be glad to see more.

The author of a Dialogue between a Soldier and a Clerk, written in 1370,[1] gives several reasons why the Roman Pontiff should be S. Peter's Successor, but never once hints that it was by Divine Right. It was so, at first, he says, because S. Peter sat in that Chair; then, because Rome was the Mistress of the World; then, by force of Custom. Peter d'Ailly writes[2]: "From what has been said, it follows that the Bishopric of Rome and the Primacy of the Church are not so essentially conjoined, but that, on a reasonable cause, they might be separated. As, for instance, if the Roman Pontiff, with a General Council, were to judge it expedient for the Church Catholic, that he should entirely resign the Church of Rome, and charge himself with another: in such a case as the destruction of Rome, like Sodom; or its falling under an Infidel power, as Jerusalem." William de Bellay, at Smalcald, was instructed to say that the King of France believed the Roman Pontiff to posssess the Primacy not

[1] In vol. i. of the Collection of Goldastus, under the title Somnium Viridarii, chapter lx. p. 78.

[2] Gerson, vol. i. p. 668.

jure divino, but *jure humano*.[1] Even Bellarmine confesses, "It is not perhaps, *jure divino*, that the Roman Pontiff, as Roman Pontiff, claims the Primacy."[2]

Looking now in this light at the question of the Primacy, it is certain that during the earliest ages of the Church, that honour was universally and willingly allowed to the Bishop of Rome. The first opposition to it was the adoption first by Alexandria, then by Constantinople, of the title, Œcumenical Patriarch. Under such men as John the Faster and Cyriacus, that name meant nothing more than an expression of dignity, any more than it did in the writer of the Clementine Epistles, to speak of S. James as *Episcopus Episcoporum*: or in S. Gregory Nazianzen, to call S. Cyprian, Universal Bishop, or in S. Chrysostom, to attribute the Præfecture of the world to S. Timothy.[3] But, in the lapse of ages, Constantinople evinced that its aim in adopting it was something higher. Thus, we find Epiphanius refusing to yield precedence to Pope John, when the latter was at Constantinople; and, under Photius (who, whatever may have been his faults, was a great and noble-minded man), no secret was made that the Primacy of the Church was claimed by the Imperial City. The Church had to decide in whether of the two Sees she would reverence the Chair of S. Peter; and the Church could not decide. Four of her five Patriarchates ranged themselves on the side of Constantinople: one, the goodliest of all, supported Rome. And thus the Great Schism began.

The corollary to be drawn from these considerations is this:—While the Church Catholic was agreed in attributing S. Peter's Primacy to the Chair of Rome, a national Church could not, it is clear, have refused to acknowledge the honour consequently due to the Roman Pontiff. But when, in the eleventh century, one half of the Church denied that Primacy, asserting that it should no longer be attributed to the See of Rome,—such Primacy being confessedly not *jure divino*, the case became widely different. A matter of purely ecclesiastical arrangement was objected to by half the Church. No Œcumenical Council was held: nor, from that time to this, has there been such an

[1] Sleidan, book ix. p. 262.
[2] De Roman. Pontif. ii. 12.
[3] Hom. vi. adv. Judæos.

assembly. A national Church, after this, in denying the Primacy to be at this moment in the See of Rome (and to suppose that the English Church does this is an extreme view of the case,) is only embracing the Oriental instead of the Western view. If it be asked,—Where then is this Primacy now? the Church of the East would answer, In abeyance. That it may be in abeyance the Roman Church itself allowed in the time of the Urbanist and Clementine schism. How, or to whom, it is eventually to be restored, we need not be curious to inquire: in the meantime, from the confession of our opponents themselves, it may be erroneous, but cannot be schismatical, to deny that it exists.

II. But let us rather own the Primacy as now existing in Rome. Alas! those who would, like ourselves, be most willing to allow it, are unable to do so, because Rome herself rejects it. She will have the Supremacy, or she will have nothing. And here, again, Pereira is most full and satisfactory. He reduces the Ultra-montane writers to a plain statement of their principles. A Bishop, they say, (and strange it is that they should say so,) is a name of order, not of jurisdiction,—an Episcopate, (so it was affirmed at the Court of Rome during the negociations for sending a Bishop into England during the reign of James I.) is not essential to a national Church: a Bishop does not derive his authority from God, but from the Pope: a Bishop may dispense in accordance with the Canons, the Pope in contravention of them. The total contradiction which these statements meet from the works of S. Cyprian, S. Augustine, and S. Basil, from the *Anathema tibi, Liberi!* of S. Hilary, the condemnation of the Three Chapters in defiance of Vigilius, and the anathema pronounced on the memory of Honorius, has not been exposed more ably by Pereira than it has been by Mr. Allies in his Vindication of the Church of England. The reader will find a comparison of the two lines of argument adopted by these two totally independent writers,—writers also, be it remembered, of different Communions,—as interesting as it is profitable. Pereira appears to attribute less to the Primacy than Mr. Allies; and to stand more on his guard against any opening to the admission of the Supremacy.

Mr. Allies was confined by his plan to the first six centuries:

Pereira descends to his own times. His great object is to show that the Roman Church has neither in Council, nor by any Papal Bull, pledged itself to the Ultra-montane view of the Supremacy. His arguments against the title assumed by the Bishops of that Communion, "by the grace of God and the Holy Apostolic See," as well as against the Bull *Pastor Æternus* of Leo X., are most able. Whether, however, he entirely succeeds in his aim, is a separate question: but he amply proves that many of the most eminent Theologians of the Church of Rome were strongly opposed to the claims of more modern Pontiffs. The reader will find Pope Agapetus resisted by the Fathers of Monson (948): the French Prelates (1004) reproaching Pope John with "sacrilegious presumption in intermeddling in the Diocese of Tours": the Archbishop of Vienne (1025) made to ask pardon of the Bishop of Maçon by the Fathers of Anse, for having interfered in his Diocese by Papal dispensation. He will find Gerson writing that "the Pope in usurping the jurisdiction and honour of the other Bishops, sins mortally": the Councillors of Paul III., telling him that the holding the Pope's will for law was the Trojan horse, whence sprung all the evils of the Church: Rosellis affirming that the Church was not built on Peter, but on Peter with all the Apostles: Escobar, that the plenitude of power was not given to Peter as Peter, but as the representative of the whole Church: Cusa, that infallibility is not promised to any member, but to the body, of the Church: the Fathers of Basle, (before the famous twenty-sixth Session,) that the Keys of the Kingdom of Heaven are not given to one, but to the Unity of the Faithful: Tostado, that the Pope may err, and many Popes have erred, in Faith and Morals: Dionysius Carthusianus, that the Pope may err in things necessary to Salvation, wherefore, *ultimatè et certitudinaliter*, we may not repose in his judgement. He will find the instances carefully examined in which a Pope has been open to the charge of so erring:—Liberius, as respects the Arians: Vigilius, first in the matter of the Jacobites, then in that of the Three Nestorian Chapters: Honorius, with the Monothelites: John XXI., on the subject of the Beatific Vision: Boniface VIII., who was all but anathematized after his decease by a General Council of the West; to say nothing of Zosimus. On the other hand,

from a denial of this great principle rose the absurd and impious adulation which has been offered to the Roman Pontiff; hence the doctrine, that it is the duty of a Catholic "to believe all that our LORD GOD the Pope says":—hence the notion that none can appeal from the Pope to GOD, because none can appeal from a man to himself. Hence also the falsifications which have been made in some passages of the Missal: such as that where our LORD, instead of saying to S. Peter, If thy brother offend thee, tell it to the Church, is made to use those words to His Disciples generally, in order that His Words may seem to give countenance to the gloss, *Prima Sedes judicatur a nemine.*

For sentiments such as these, professed by some of the wisest and holiest sons of the Church of Rome, the Church of England is condemned. She has no wish to violate the Apostolic rule, honour to whom honour: She is ready to acknowledge the Primacy, if Rome will drop the Supremacy. But in the present state of things, it is not merely because Rome claims too much, that the Church of England is accused of giving too little: but Rome will not in any way receive what is her due; nor is there any Church under the sun which is able to render it to her. The *Roman* (*i.e.* intruded) Patriarchs of the great Sees of the East are the Pope's slaves: *Ecclesia serva nata Romani Pontificis,* as Cajetan says. The real occupants of those Thrones cannot show any deference to Rome, because she refuses deference and claims obedience. This leads to the question what is the true meaning of the Primacy and Supremacy.

It is a very difficult question to determine where the one ends, and the other begins. Let the Roman See have the first voice: only we are bound to protest against its being the only voice. "For although I write in my own name," says Pope S. Julius, addressing the Orientals in the cause of S. Athanasius, "I am not expounding my own judgment only, but that of all the Bishops of Italy and of these regions." Is it within the limit of imagination that Pope Pius IX. would so address Athanasius of Jerusalem, or Methodius of Antioch? Would a French or Spanish Synod now dare to re-examine the decrees of a Council which the Pope had sanctioned? Yet the Fathers of the Fourteenth Council of Toledo examined the Canons of the Sixth Œcumenical Synod, and approved them: the

Fathers of Frankfort, those of the Second of Nicea, and *condemned them*, and in them the approbation of Pope Hadrian I. "The above written most holy Fathers," says the second Canon, "refused with contempt, adoration and servitude to images, and consentiently condemned it." None can cal Rome's the only voice in these cases.

Again, to allow the right of the Roman Pontiff to be President of all Bishops, is to allow his Primacy: to assert that he can at will limit and restrain their jurisdiction, is to assert the Supremacy. So did not the Fathers of Antioch, where they give (Canon IX.) to every Bishop unlimited power over his own Diocese. So did not those of the Eighth Council of Toledo, when they speak of the *episcopalis eminentiæ Divina auctoritas.* Nor those of the Second of Seville, who call every Prelate the *Summus Pontifex*, in his own Diocese. Nor the Archbishop of Grenada, with his countrymen, in the Council of Trent: "It is not fitting," said he, "that we allow ourselves to be carried away by the flatteries of the Italians. Let the Pope give us what is ours, for we give him more than is his."

Once more, though the Roman See has almost always been the refuge of the oppressed, it does not follow that appeals of any and every sort may be made to Rome, more especially where they are made *omisso medio*, and with intent to avoid the ordinary jurisdiction of the Bishop or Metropolitan. And appeals, according to the ancient custom, and the meaning of the famous Canon of Sardica, ought to be heard on the spot, not at Rome, where witnesses are so hardly to be conveyed, and evidence so scarcely to be procured. "If the jurisdiction of each Bishop be not confirmed to him," says S. Gregory, "what is this but that by us, by whom Ecclesiastical order ought to be supported, that order is confounded?" "That any and every appeal may be received in the Roman Church," says Hildebert of Tours, to the then Pope Honorius, "is a doctrine unheard on this side the Alps. If a novelty of this kind shall ever happen to prevail, Episcopal censure will be at an end.[1]"

In the same strain wrote the Prelates of France in 1655, when the Pope interfered by Cardinal Mazarin, to prevent the passing a censure on the Jesuit Bagot. "Nous avons entendu,

[1] Ed. Beaugendre, ii. Ep. 41.

que les Evêques n'étoient point vicaires d'aucune puissance Ecclésiastique que fut sur la terre: et que leur puissance tant de l'Ordre que de la jurisdiction intérieure pour la remission des péchés, et de l'extérieure consistant au pouvoir d'excommunier, de juger et definer les matières de foi, soit en première instance, soit aux Conciles, leur étoit." And again, in their famous declaration of Nov. 24, 1665. "Chaque Evêque est le Vicaire de JESUS CHRIST dans son diocès: le seul chef de son Eglise, le premier pasteur de cette portion du troupeau de NOTRE SEIGNEUR, et enfin l'époux du Siège qu'il remplit; et qu' ainsi il ne peut être dépouilli de l'autorité qu'il a de Droit Divine sur les ovailles qui lui ont étés commises."

So further: it may be a proper respect to the Primacy to acquaint the Roman Pontiff with the Canons of a Provincial Synod: to say that such Canons have no force till he approves them, is to vindicate the Supremacy. Nor do we learn this principle from mediæval, and still less from Primitive authors. "The ancient Romans," says S. Agobard of Lyons, "religiously venerated the Gallican Canons.[1]" "Nor is there any doubt," says Cardinal Cusa,[2] "that Councils, as well General, as National, or Provincial, had power to pass Canons for themselves. Thus, if seven Provinces of Gaul met, they would take order for those seven Provinces. The Pope is not Universal Bishop, but first among the Bishops; and we base the force of the Holy Canons not on the Pope, but on the consent of the Church."

Thus, also, it may be most fitting that the successor of S. Peter should have a power of dispensation superior to his Fellow Bishops: but then, that power must only be exerted on reasonable causes. "*Sunt quidam,*" says Godfrey of Vendôme,[3] "*qui Romanæ Ecclesiæ omnia licere putant, et quasi quâdam dispensatione aliter quam Divina Scriptura præcepit eam facere posse. Quicumque itaque sic sapit desipit.*" And again, in another place,[4] "*Dispensationes aliquando in Ecclesiâ faciendæ sunt, non quidem amore pecuniæ . . . . sed piâ et misericordi intentione. Siquis vero aliter in Ecclesiâ dispensationes facit rationi simul et veritati contradicit: et ideo non recte dicitur* CHRISTI *Vicarius.*

[1] Advers. Leg. Gundobad. cap. 12.
[2] De Concord. Cath. ii. 13.
[3] Opusc. 2.
[4] Opusc. 5, ad Calixt. ii. Pap.

In these particulars, and such as these, the distinction between the two doctrines is brought out strongly: and it is for the Primacy that Pereira contends throughout the whole of the following work.

Nevertheless he does not escape that inconsistency which Mr. Allies points out in the principles of Bossuet and his followers. If the doctrine of the Supremacy be true, they give the See of Rome far too little: if that of the Primacy, far too much. Pereira proves clearly that the Jurisdiction of the Episcopate comes immediately from GOD, and not from the See of S. Peter: that it is supreme and absolute in its several Dioceses, whether for the purpose of dispensation, or in whatever other manner. But he finds that, as matter of fact, the Bishops in the Roman Communion have no longer these inherent rites of their order: that they cannot make Canons in Synod, that they cannot dispense, that they cannot even, except by licence, read prohibited books: that they call themselves by a title unknown to all antiquity, Bishops by the Grace of GOD, and of the Apostolic See. The first instance of this title occurs in the Constitutions of an Archbishop of Nicosia, in Cyprus, 1251. The first in Italy, an Archbishop of Ravenna, 1310. In Germany, Henry, Bishop of Hildesheim, 1350. In France, Pierre, Archbishop of Narbonne, 1351. Before this period we sometimes find an emphatic denial of the doctrine contained in the addition: *ego Gulielmus solius* DEI *gratiâ Aptensis Episcopus.* Pereira is therefore obliged, in compliance with the doctrine of his school, to invent a compact, entered into at some unknown time, between the Pope and his Bishops: by which, partly for the sake of honouring S. Peter's See, partly for the purpose of more effectually defending the rights of the Church from feudal tyranny, the latter surrendered most of their privileges to the Roman Pontiff, he, in his turn, engaging to restore them when the necessity of things should so demand. There is no shadow of authority, it need hardly be said, for this supposition: Hildebert, S. Bernard, Robert of Lincoln, and, long after, Gerson, speak of the Reservations as a robbery, not an exchange. And it is worthy of notice that it was after the time even of the latter that the Roman Court brought forward its greatest pretensions. The great schism weakened the authority of the Roman Pontiff: the

Council of Pisa, which had power to give a third head to the Church, but not to crush the other two, still further injured it: the Council of Constance, by deposing all three, and declaring the rights of the Œcumenical Synod over the Pope, seemed effectually to have restrained it: and had the Council of Basle been successful, probably the right idea of the Primacy might have been restored to Europe. But the will of GOD was otherwise. The so-called Œcumenical Council of Rome under Leo X., which the most prejudiced Ultra-montane can hardly venture to call general, was remarkable for nothing but its fulsome and profane flattery of that Pontiff: that of Trent, for want of a Gerson or a Cardinal of Arles to assert the rights of the Church, after several ineffectual struggles for liberty, succumbed to the pretensions of the Vatican. Thenceforward the Popes, freed from the constant apprehension of a Future Council, and deprived of great part of their Patriarchate, revenged the loss of half, by ruling more despotically over the other half: till Bishops are reduced to little more than functionaries for ordaining, confirming, and consecrating. The present state of the Roman Communion in England shows this. Was it ever, from the beginning of the Church, heard, that a Christian Communion was governed (as that Communion is now governed,) by Vicars-Apostolic? that a Church should demand its own Bishops, and Rome refuse to hearken? Why is this, but that the present authority enjoyed by Prelates in the Roman Communion is not sufficient for the humbled condition of Anglo-Romanists? They assume a delegated power, because their own is not sufficient. "Bonane hæc species?" as S. Bernard asks. "Mirum si excusari queat vel opus."

But there is another reflection which can hardly fail to arise from the perusal of the present volume. The horrible excesses,—the till then unheard of monstrosities,—which accompanied our separation from the Roman Communion, have since been repeated in other countries. Were they, on this account, separated from the same Communion? Let France, and Spain, and Portugal, and some of the Catholic states of Germany answer the question. The dispute between the Roman See and Henry VIII. was not more serious, in its origin, than that between Philip II. of Spain, and Paul IV. in 1552: nor Philip V. of Spain, and Clement XI.

in 1709. It was not so serious as that between João V. with Benedict XIII. in 1728: (which had very nearly severed Portugal from Rome,) nor that dispute which occasioned the present work: and where it is to be noted, the Portuguese monarch was clearly wrong. How was the rupture prevented? By a Concordat. A Concordat has settled the Ecclesiastical affairs of Spain, after excesses which equal those of our own Reformation. Had the rupture with Henry VIII. occurred two centuries later, we should, in all probability, have still been in the Communion of Rome. But Rome was then strong, and England was weak: the Catholic powers of Europe were ready to draw their sword in defence of S. Peter's successor: and that a schism in the Western Church should continue, seems to have been regarded as an impossible supposition. The monster under whom that schism commenced in England, would doubtless have refused all terms: so also would the puerile fanaticism of Edward VI. But had a reasonable Concordat been offered to Elizabeth, had the same allowances been held out to English, as to Uniat, Priests; had Canterbury been raised to the same authority that the Golden Bull bestowed on Lisbon, as the means of retaining João V. in the Communion of Rome, there is every reason to believe that the result might have been different. Men had not yet learned toglory in their separation, and to regard schism as piety. Roman Controversialists of the sixteenth century had, in this respect, a great advantage over those of the present day: they could point to England as a solitary instance of a Church plundered, Monasticism overthrown, and the Holy See resisted. Now the case is widely different. Then there had been few instances in name, and none in the modern sense of the thing, of a Concordat.

If then it appears, on the one hand, that the Roman Pontiffs have endeavoured, contrary to the Canons, to erect their Primacy into Supremacy, and if, on the other, it be urged that the Church of England has refused, since the Reformation, to acknowledge that Primacy at all, we must be considered as in a state of appeal to a Future General Council, whenever it shall please God that such a Synod shall be celebrated. If the Church of England should then refuse to meet the rest of the Christian world, or if, after meeting it, she should refuse to obey its orders,

she will undoubtedly brand herself as schismatical, and her sons, as they value their own salvation, must come out of her. Yet surely they who, while they remained her faithful children, lived *bonâ fide*, in this state of appeal, believing that when her trial came, she would be found Catholic, and who departed this life in that belief, and in her Commnnion, will have delivered their own souls, whether her conduct hereafter shall warrant or disappoint their expectation. But if we are to be considered under appeal, so is Rome also:—and Rome, if she will not hear the Voice of an Œcumenical Council, has spoken her own character by the mouth of one of her Pontiffs. "I boldly affirm,[1]" says Gerbert, Archbishop of Rheims, afterwards Pope Sylvester, II., in a letter to Sigrinius, "that if the Bishop of Rome shall have offended against his brother, and after often admonition shall have refused to hear the Church, that Roman Pontiff, by the command of God, is to be regarded as a heathen man and a publican." Nay, Innocent III. (than whom no one claimed more for his See,) speaks nearly as strongly. Thus he writes to Philip Augustus: "If we should endeavour to decide anything on this point without the deliberation of a General Council, besides the offence to God, and the infamy in the eyes of man, we should perchance incur danger to our order and office." But this doctrine of appeal to a Future Council did not suit more modern Pontiffs. Therefore Martin V. forbade all such appeals in a Bull of 1418[2]: Pius II. (1459,) in the Bull *Execrabilis*, Julius II. (1509,) in the Bull *Suscepti regiminis*, Gregory XIII. in the Bull *Consueverunt*, Paul V. in the Bull *Pastorales*, and lastly the famous Bull *In Cœna Domini*, "which," says Pereira, in another work, "all nations at the present day agree in regarding as one of the most disgraceful and scandalous attempts of the Church of Rome in modern times."

These Appeals were always customary. Thus, in 1239, Frederic II. appealed from the sentence of Pope Gregory IX. to a General Council: in 1246, the Church of England made the same appeal from Alexander IV.: in 1264 the Bishops in the

[1] Bochel, Collect. Decr. Eccl. Gallican. p. 319.

[2] This Bull does not exist, and its name is therefore unknown: nor is mentioned by any contemporary writer, except Gerson, who speaks of it in his treatise *Quomodo et an liceat in causis fidei à Papâ appellare.*

Synod of Reading sanctioned an appeal "to the Pope in better times, or to a General Council, and the Judge of all." And after these Appeals were forbidden, they still continued.

On April 22, 1418, that is, six weeks *after* the publication of the Bull of Martin V. mentioned above, the Polish ambassadors appealed from a decision of the same Martin to a Future Council. In 1427, Chichele, Archbishop of Canterbury, did the same. So, in 1460, did Sigismund, Duke of Austria, when excommunicated by Pius II. So, in 1472, did the Elector of Mayence from the same Pius II.: in 1478 the Bishops of the Duchy of Florence from Sixtus IV.: in 1509, the Venetian Senate from Pope Clement VII.

Appeals were always more frequent in France than elsewhere, and as late as 1688, M. de Harlay and the University of Paris appealed from the letter of Innocent XI. to a General Council. So also, between 1717 and 1720, nineteen of the French Bishops appealed in the same way from the famous Bull *Unigenitus* of Clement XI.: and besides the Bishops, the Universities or schools of Paris, Rheims, Caen, Nantes, and Poictiers, seven Cathedral Chapters, and a very large number of Abbats, Doctors, Seculars, and Regulars. On this Clement XI. issued his brief, *Pastoralis Officii,* in which he condemned the Act of Appeal: (for it had been printed.) The Parliaments of Paris and six other cities suppressed the brief: and the same Bishops appealed again.

There is, then, nothing uncatholic in a state of appeal: and, in that state we are now placed. Nor does it matter in how many, or in how few particulars that appeal may be decided against us: so those who shall be rulers of the Church of England when it shall be heard conform themselves to the decision of the Church Universal. But can it be asserted or believed that, in all the points of difference between Rome and ourselves, her claims would be allowed? Surely not, while the writings of her own Prelates, S. Leo, and S. Gregory, remain to tell what she should be, and her *Liber Diurnus* to testify what she was. Well might the Papal Court attempt to suppress the second edition of that Book, which the Jesuit, John Garnier, brought out at Paris in 1680. The MS. from which he edited it was written at the latest by 750, for the use of the Roman

Pontiffs as a ritual or Ceremonial of their Court. It begins with prescribing the formalities to be observed by the Roman Pontiffs in writing to the Emperors and their officers, while they were the temporal Lords of Rome, and the Popes their vassals. The following is the superscription to the Emperor: *Superscriptio Domino piissimo et serenissimo, victori ac triumphatori filio, amatori* DEI *et* DOMINI *nostri* JESU CHRISTI *Ill.*[1] *Augusto Ill. Episcopus, servus servorum* DEI. Such was the manner in which S. Gregory, S. Agatho, and S. Leo III. addressed the powers of this world: such were not the language nor the sentiments which Paul V. or Urban VIII. used towards them. Contrast the *Liber Diurnus* with the question of the Legates of Hadrian IV. to the Electors of Frederic I.: *a quo ergo habet, si a Domino Papâ non habet, imperium ?*

Titulus iii. of this book contains the form of letter which, after the election of the new Pontiff, the Roman Clergy wrote to the Emperor, requesting his approbation of the election. Baronius and Binius call this a tyrannical usurpation on the part of the state: anyhow it was not an usurpation, and those writers must have known it. For we find S. Gregory the Great writing to the Emperor Maurice, and requesting him not to consent to his election.

The most important Titulus, however, is the fifth. Here we have the Profession of Faith or oath, which the new Pontiff made on the day of his coronation. After declaring his belief in the doctrine of the General Councils, he was to proceed; "*diligentius autem et vivacius omnia decreta prædecessorum nostrorum,* QUÆCUNQUE SYNODALITER STATUERUNT ET PROBATA SUNT, *confirmare et indiminutè servare:* and again, *sacrosque canones et constituta Pontificum nostrorum, ut divina et cœlestia mandata custodire.*'

It appears from the seventy-third Epistle of Ivo of Chartres, (to the Abbat Bernard,) that the Popes continued up to the beginning of the twelfth century, to make this profession: after which they took pains to conceal it. Yet Boniface VIII. took it.[2]

[1] *Ill.* is the well-known abbreviation of former times, where *N.* would afterwards have been used.

[2] This is mentioned by Bzovius in his annals, and by J. Rubens in his Life of

Besides this, the *Liber Diurnus* contains a second profession, the antiquity of which may be seen from the fact, that in the Catalogue of General Councils, it ends with the Sixth (680.) In this Profession, the Popes include Honorius among those condemned by that Synod: This, in itself, was sufficient reason for the attempted suppression of the *Liber Diurnus*, when Baronius had brought all his learning to show that Honorius was not really condemned in the Sixth Council, but that the Acts were falsified.

In conclusion, we would again express the hope with which we commenced, that these pages may, by GOD's Grace, be useful in settling the doubts which any may entertain as to the Catholicity of our Spiritual Mother, from the fact that she is not in visible Communion with the See of Rome. Other points of equal importance remain to be urged against her: imputed heresy in her formularies, allowed heresy among her sons, violated discipline, Donatist intolerance, alliance with Protestant heretics: but these must be met on their own separate grounds.

At present we are concerned with another question, which we will state in the eloquent words of De Veron, and so conclude.

Nullæ Decretales Romanorum Pontificum contentæ in Corpore Juris Canonici, sive in sex libris Decretalium, sive in Clementinis, sive in Extravagantibus, nullæ Bullæ posteriorum, qui in Sede Petri sederunt, sufficientes sunt fundando Articulo Fidei Catholicæ. Quia Papa quocunque modo loquens, etiam ex Cathedrâ, non est Universalis Ecclesia: ergo quod ab eo proponitur, non proponitur ab Ecclesiâ Universali: ergo non est doctrina Fidei Catholicæ. Addo, conclusionem hanc tam certam esse inter doctores omnes, ut si quis contrarium doceret, novator ipse foret, et censurâ percellendus, quippe novi dogmatis inventor.

J. M. N.

SACKVILLE COLLEGE, EAST GRINSTEAD,
Jan. 12, 1847.

Feb. 12.

Boniface VIII.: also by Natalis Alexander in the History of the Thirteenth Century, i. 14. The remark of the Roman Censors on this passage is to be observed: *In hoc Articulo religiosi Censores hanc propositionem notant:* Papa emisit professionem fidei secundùm formam Diurni Romani.

The following editions have been used.

S. Ambrosii Opera, Ed. Benedict. Venice, 1750, tom. iv.
S. Anselmi Opera, Ed. Gerberon. Paris, 1721.
S. Augustini Opera, Ed. Benedict. Paris, 1689, tom. x.
Aurelii, Petri, Opera. Jussu et impensis Cleri Gallicani. Paris, 1646.
Baronii Annales Ecclesiastici, cum Critice Pagii. Lucæ, 1738,—1759.
S. Basilii Opera, Ed. Garnier. Venice, 1750.
S. Bernardi Opera, Ed. Horst. Leyden, 1679, tom. vi.
Bossuet: Defence de la Declaration, &c. Amsterdam, 1745, tom. iii. in ii.
Cassiodorus, Ed. Garel. Rotomagi, 1679.
Codex Theodosianus, Ed. Ritter. Mantua, 1740, tom. vi.
S. Cypriani Opera, Ed. Benedict. Paris, 1726.
Gersoni Opera, Ed. Dupin. Antwerp, 1706, tom. v.
Gratiani Decretum. Leyden, 1560.
S. Gregorii Magni Opera, Ed. Benedict. Venice, 1771, tom. xvii.
S. Gregorii Nazianzeni Opera, Ed. Tolle et Minalon. Venice, 1753, tom. ii.
S. Gregorii Turonensis Opera. Ed. Ruinart. Paris, 1699.
Gregorii Papæ IX. Decretales. Leyden, 1559.
S. Hieronymi Opera. Ed. Vallarse.
V. Hildeberti Opera. Ed. Beaugendre. Paris, 1708.
Hincmari Opera. Paris, 1645, tom. ii.
S. Leonis Opera, Ed. Cacciari. Rome, 1755, tom. ii.
Socratis, Sozomenis, &c. Hist. Eccles, Ed. Vales. Turin. 1747. tom. iii.
Spicilegium D'Achery, Ed. De La Barbe. Paris, 1721, tom. iv.
Synesii Opera, Ed. Petav. Paris, 1612.
Tertulliani Opera, Ed. Vallarse. Venice, 1767, tom. iii.
Theodoreti Opera, Ed. Sirmondus, Paris, 1642, tom. iv.

CORRECTIONS.

Page.	Line.	
4.	23.	*for* instition, *read* institution.
11.	6 *from bottom.*	*After* Eugenius III., *add* Lib. vi. Cap. 3. De Cons.
40.	16.	*The quotation from S. Cyprian ends at* entire.
	note 2.	*for* pertinetur, *read* pars tenetur.
43.	11.	*for* autonomasia, *read* antonomasia.
44.	12.	*dele* actual.
49.	14.	*for* Cangra *read* Gangra.
51.	2.	*read* M. Paris, who lived in the thirteenth century, declares that it was ordered in the Council of London, A.M. 1141, or according to Wilkins, 1143.
56.	4 *from bottom.*	*After* Chair, *insert* occurs.
62.	14.	*for* by their decrees, *read* dogmatically.
63.	note 2.	*for* Ecclesia, *read* Ecclesiæ.
81.	15.	*for* on, *read* in.
116.	12.	*for* to, *read* and.
117.	17.	*for* mo, *read* me.
171.	3.	*for* Primate, *read* Prelate.
173.	3.	*for* cannot, *read* cannot but.

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TO

THEIR EXCELLENCIES, THE MOST REVEREND LORDS,

THE

BISHOPS, AND ARCHBISHOPS,

OF

PORTUGAL AND ITS DOMINIONS.

Most excellent and Reverend Lords,

A Book which is entirely devoted to the purpose of demonstrating and defending the Rights of Bishops, and which, not merely in my own opinion, but in that of four most eminent judges, demonstrates and defends them soundly, should only be dedicated to Bishops, and can scarcely fail to meet with their approval.

Such is the work I now present to your Excellencies, which, in the ten Principles which it establishes, contains the like number of sublime and uncorrupted ideas of the Episcopate: ideas given in the Holy Scriptures by inspiration of the Holy Spirit, ideas handed down from the earliest ages in the Sacred deposit of Apostolic Tradition; ideas, which in spite of, I know not whether to call it the ignorance, or the adulation of these latter times, appear in this Essay restored to their original splendour, as re-invested with all those marks which usually accompany what is genuine and true.

Christ our Lord is the immediate Author of the Episcopate,

because it was He Who, immediately, ordained his Apostles Bishops, when He said to them, "As My Father hath sent Me, so send I you: Receive ye the HOLY GHOST: go ye into all the world; preach, teach, baptize: whatsoever ye shall bind or loose shall be bound or loosed in Heaven." Words, which from their very fulness and indefiniteness, denote a power without limits: without limits as to *matter*, since its measure was the necessity of the people: without limits as to *place*, since, in virtue of these words of CHRIST, each Apostle had no less a field than the whole world given to him for his Diocese.

I should be doing an injustice to your Excellencies, were I to waste time in proving this consequence. But although I am, in this Dedication, addressing your Lordships only, there will, nevertheless, be many persons who will read it that are not Bishops; I will therefore allege in my favour two Theologians, whose authority may stand in the place of all others. First, Cardinal Cusa, Bishop of Brescia, Book ii. Chap. xiii. *de Concordia Catholica*. "We say truly that all the Apostles were equal to Peter in power: moreover, it must be remembered that in the beginning of the Church, there was but one general Episcopate."

The second is Dominic Soto, the immortal glory of the illustrious order of the Dominicans, who distinguished himself at the Council of Trent, in the time of Paul III. He writes thus, "Since jurisdiction in both kinds is, in its fullest sense *essentially*, part of the Apostolic Office, all [the Apostles] received both kinds, immediately, from CHRIST, and so every one of them was made by CHRIST a Bishop of the whole world."[1]

In order then to the more perfect discharge of the Episcopal Ministry, as well as for the better preservation in the sacred College of Catholic Unity, of which CHRIST Himself made Peter the Centre, the Apostles, by common consent, divided among themselves the Provinces which each one was, especially, to teach and govern. And this was the origin of *Dioceses;* this was the reason why, at the beginning of the new Church, the Apostles introduced three ranks into the Episcopacy, viz. those of Bishops, Archbishops, and Primates, titles of greater authority, for the exterior government of the Ecclesiastical Hierar-

[1] Soto on Sentenc. 4. p. 548.

chy, but not of greater jurisdiction as to the internal government of each Diocese. For, as S. Jerome says, "Wherever a Bishop may be, whether at Rome or Eugubium, or Constantinople, or Alexandria, he is possessed of the same power and Priesthood, for all are the successors of the Apostles." And Pope Symmachus, in more concise terms: "After the pattern of the TRINITY, Whose power is One and Undivided, there is One Priesthood amongst the different Bishops." Whence William of Paris well said, that our LORD CHRIST, *as Man*, did not exercise a greater authority than that of a Bishop. "Ipse Dominus JESUS CHRISTUS non plus quam Episcopus est in dignitatibus Ecclesiasticis, secundum quod Homo."

Now if the Bishops succeed the Apostles in this power which CHRIST annexed to the Episcopate, as we have just quoted from S. Jerome, and as all antiquity teaches with S. Jerome, then it is clear that the power of the Bishop within his own Diocese, must be co-extensive with the wants of his flock. So S. Cyprian wrote to Pope S. Stephen: "Habet in Ecclesiæ administratione voluntatis suæ arbitrium liberum unusquisque Præpositus, rationem actus sui Domino redditurus."[1]

It is true that in course of time the Successors of S. Peter appropriated to themselves the exercise of certain jurisdictions which had previously been possessed by the Bishops. But besides that these first Reservations all belonged to causes, *in foro contentioso*, and strictly speaking, were in accordance with the exterior policy of the whole Church, they were not appropriated by the Roman Pontiffs without the consent of the other Bishops, who, out of complaisance and veneration for S. Peter, the Prince of the Apostles, alienated from themselves in favour of the Popes, his Successors, these prerogatives which were originally common to all Dioceses. Of this we find an excellent example (which I have also given in the body of the work) in the Acts of the Council of Sardica, celebrated in the middle of the fourth century. The following are the words of the celebrated Hosius, Bishop of Cordova, the President: "Si vobis placet, Sancti Petri Apostoli memoriam honoremus ut scribatur ab his qui causam examinarunt Julio Romano Pontifici et si judicaverit renovandum esse judicium, renovetur et det judices"; and then immediately it

[1] S. Cyp. Ep. 72.

is added, "Respondit Synodus, Placet." We have here the Fathers of a large[1] Council (amongst whom there were, besides the President, many Spanish and Portuguese Bishops, such as the Bishop of Merida, then Metropolitan of Lusitania, and the Bishop of Astorga, then in the Province of Braga,) confessing that in honour and memory of the Apostle S. Peter, the first Bishop of Rome, they had all resolved and agreed that the Roman Pontiff should thenceforward enjoy the privilege of being allowed to grant a new trial, or revision of their sentence, to Bishops condemned in the Provincial Synod, not by bringing the cause into the Roman Courts, as is now done in conformity with the Chapter, *Causæ Criminales*, of the Council of Trent, but by naming new judges to examine afresh the cause of the appellant Bishops, in their Province.

It is certain that these and other prerogatives attached to the Roman Primacy had their beginning in the consent of the Bishops, or of a Council; prerogatives which many, either from not knowing better, or from their not choosing to distinguish that which is of Divine Right in the Primacy, from that which is of Ecclesiastical right, confound in such a manner and to such a degree, that they will have every spiritual qualification in the Roman Pontiffs to be derived to them by the institution of CHRIST.

So certain, indeed, is it, that many of the Prerogatives which the Bishop of Rome now enjoys, do not belong to him by Divine right, but by the concession and consent of the Church represented in the body of Bishops, that even with respect to the perpetual annexation of the Primacy of S. Peter to the See of Rome, many and most learned Theologians hold it not to be a *Divine* but an *Ecclesiastical* institution, which, absolutely speaking, may be changed or altered.

For although CHRIST Our LORD instituted the Primacy in the person of S. Peter, and, according to the constant tradition of all the Fathers in all ages, willed, that there should be perpetually in His Church a visible chief or Head of the Faithful, yet these Theologians do not teach that this chief must be, by Divine Right, the Bishop of Rome and no other Bishop; but that this union of the two offices arose from the devotion and gratitude

[1] [Pereira says, General: but this is not usually allowed. TR.]

of the Church, which in honour and memory of the Prince of the Apostles, wished to honour with the preservation and succession of the Primacy, a city which, besides being the Capital of the World, had been the See of the first and greatest Bishop. I have no doubt that they who have not that acquaintance with Theology and its dogmas, which I believe, and ought to believe, your Excellencies to possess, will upon reading what I have just written, regard such Theologians as heretics. But who will dare to call John Gerson a heretic, the Chancellor of the University of Paris, the soul of the General Council of Constance, and surnamed *the most Christian Doctor?* John Gerson who, adding to his stupendous erudition a holy life, shone after his death by so many and illustrious miracles, that Charles VIII. urged to it by the fame of them, directed a chapel to be built to his honour and memory, and his image to be placed therein, where for many years Gerson received public devotion, with the approval and applause of the Archbishops of Lyons, and the other great Prelates of that most flourishing Kingdom. This Gerson in his Treatise, *de Potestate Ecclesiastica et origine Juris,* writes thus, at the end of Consideration 7. "But some one will ask how the Church is called Roman, when in the beginning it was at Antioch? The answer is easy, if we abstract all consideration of the *locality,* and say that the Roman Church is that Diocese, Province, or See, which hath, as its characteristic, the being ruled by Papal authority, and embraces that authority. Thus the common saying is true, 'where the Pope is, there is Rome.'"

Again, who will venture to call Nicolas de Cusa a heretic, a Cardinal and Bishop of Brescia, and a Doctor of the Sacred Order of the Regular Canons of S. Augustine; who in Book ii. Chap. 34, *de Concordia Catholica* writes thus: "That the Roman Pontiff cannot be proved to be the perpetual Prince of the Church, is sufficiently clear from this"; and further on: "Wherefore, if by any possible contingency, the Archbishop of Treves were elected by the Church in Synod, as its President and Head, he would more properly be the Successor of S. Peter in the Primacy, than the Bishop of Rome."

Who will brand as heretics the two famous Professors of Salamanca, Dominic Soto and Dominic Banhes, of the illustrious Order

of Dominicans? The first of whom in his Commentary on the Fourth of the Sentences says thus, "Whether the extreme point of dignity is *jure Divino* in the Roman Church, so that the Bishop of Rome and the Supreme Pontiff are joined in one by a Divine bond, IS NOT SO CERTAIN AS SOME IMAGINE."[1] The second, in his Commentary on the Second of the Second of S. Thomas, says, "Although it is believed to be true by very learned and Catholic men that the Roman Pontiff is *jure Divino* the successor of Peter, it is nevertheless NOT THE CATHOLIC FAITH, but simply a very probable opinion." And again: "Some learned Doctors of our time say, that though the Bishop of Rome be the Supreme Pontiff, nevertheless these offices are not united by Divine right. So Dominic Soto thinks."[2]

Now let us pass on to the Reservations belonging to the Penitentiary; even at the commencement of the eleventh century the Bishops were so tenacious of their authority and jurisdiction that at the Council of Salegunstadt, in 1022, it was defined that those absolutions were null which the Pope might grant to persons from other dioceses without the previous consent of the Bishop.[3] And in the Synod of Limoges in 1033, the Fathers delivered this as the settled doctrine: "It is not lawful for any person to receive penance and absolution at the hand of the Pope, without having first consulted his own Bishop." Establishing it upon this memorable ground, that "the Popes ought to confirm, not to invalidate, the sentence of all the Bishops, for as the members ought to follow their head, so the head must not distress its members."[4]

This doctrine of the Council of Limoges naturally leads us to inquire and discover what is the idea which we ought to have of the Primacy of the Pope, an idea which, if unjust, destroys all the good order of the Ecclesiastical Hierarchy, but if rightly understood preserves all the whole mystical body of the Church in harmony and union. The Fathers of Limoges confess that the Bishops ought to obey the Pope as the Head; but that at

[1] Soto, p. 645. [2] Banhes, Tom. ii. p. 52 and 57.—See Appendix, A. 1.

[3] Labbe, Tom. ix., p. 847.

[4] Labbe, Tom. ix., p. 908. Marcion, excommunicated by his father, a holy Bishop, and having recourse to Rome for absolution, the Clergy (the See being vacant by the death of Pope S. Hyginus) replied: Nobis injussu venerandi patris tui id facere non licet. S. Epiphan. Hær. 42.

the same time, the Pope ought not, because he is the Head, to injure such important members as the Bishops. They knew by the teaching of S. Paul that as in the physical body each member has its own proper functions which cannot be inverted without disordering the whole, so in the mystical Body of CHRIST, which is the Church, CHRIST Himself hath assigned to some one function, and to others another. "But now hath GOD set the members every one of them in the body, as it hath pleased Him . . . . . Now ye are the Body of CHRIST, and members in particular."[1] To the Pope, CHRIST has assigned the functions of the head, to the Bishops those of the arms and hands. If the arm desire to become the head, the body will be monstrous; if the head desire to usurp the place of the arm, it will be equally deformed; and if the head should arrogate to itself all the functions of the whole body, it will appear to all to be a chimera; "if the whole body were an eye, where were the hearing? Where the smelling? And if they were all one member, where were the body?"[2] To this purpose S. Bernard divinely explained the passage of the Apostle referred to, writing to his disciple Eugenius III., Book iii. chap. 4. "Monstrum facis, si manu submovens digitum, facis pendere de capite, superiorem manui, brachio collateralem. Tale est si in CHRISTI Corpore membra aliter locas quam disposuit Ipse." Whence he concludes that the Pontiff is bound to preserve whole and intact, and not to usurp to himself, the rights of the Bishops. "Ye are appointed in order to preserve to each the gradation and order of honours and dignities, not to envy them; as one of you saith, 'honour to whom honour.'"

Now it is clear that the honour and dignity of the Bishops does not consist in calling themselves Bishops, or in using the *insignia* of Bishops; it consists in exercising the functions peculiar to the Episcopal character: the functions of Pastors over their flocks: the functions which the Apostles exercised, whose successors, by Divine right, the Bishops are: the functions which CHRIST Himself in the Gospel designated in such ample terms when He instituted the Episcopal order. To deprive the Bishops of these functions is to deprive the principal members of CHRIST's Body of their proper operations; it is to desire that

[1] 1 Cor. xii. 18 and 27. [2] 1 Cor. xii. 17 and 19.

the Bishops be not Bishops, because in the natural order of things if any being loses the operations proper to its species it loses its essential character. Gerson says admirably, "He who takes from any being its proper operations, certainly, according to the Philosophers, takes away its proper "form." For what advantage is it that a man be a Bishop without the execution of the office which CHRIST conferred upon the Episcopate?"[1]

To wish then that the Pope, because he is the Primate of the Church, should therefore take from all the Bishops, and reserve to himself, just as he pleases, the exercise of all those functions which by CHRIST were made proper to the Bishops, is to entertain a totally new idea of the Primacy, an idea unknown to antiquity, and altogether opposed to that which the holy Fathers have left us, as well as the most celebrated of the Roman Pontiffs themselves.

What Pope could know better what were his rights as Primate than Gregory the Great? Yet it was Gregory who wrote to S. Eulogius,[2] Bishop of Alexandria, that he should not call the decrees of the Pope Mandates, because to *command* was the property of Lords; while the Pope was not Lord, but the brother of the Bishops. "Your Beatitude saith to me, *As you have ordered,* which word *order* I beg may be removed from my hearing, since I know who I am and who you are. For by office you are my brother: in behaviour, my father. I HAVE NOT, THEN, ORDERED, but what seemed to me to be useful I have taken care to point out."

But lest your Excellencies should attribute these expressions of S. Gregory to his humility rather than to his wisdom, hear what S. Bernard wrote many years afterwards to Pope Eugenius III. "What did the holy Apostle leave you? was it any Lordship? Nay, hear him yourself; he says, 'neither as being Lords over GOD'S heritage, but being ensamples to the flock.'[3] And that you may not think it said from humility alone, instead of truth, there is the voice of the LORD in the Gospel, 'The kings of the Gentiles exercise dominion over them, but it shall not be so with you.' IT IS PLAIN THAT DOMINION IS FORBIDDEN TO THE APOSTLES." And in another place, "Scias Romanam Eccle-

[1] Gerson, Tom. ii., p. 183.
[2] S. Greg., Tom. viii., Ep. 30.
[3] 1 Pet. v. 3.

siam aliarum Matrem esse non Dominam: ET TE NON EPISCOPORUM DOMINUM, SED UNUM EX IPSIS."

The same S. Gregory in another part of the same letter, blames Eulogius for giving him the title of "*Universal Bishop*," assigning this reason, that it savoured of pride in the Bishop of Rome to call himself *universal*, and that the phrase could not be admitted without wrong and offence to the other Bishops, when the honour of the Pope ought to arise from that of the other Bishops. "In Præfatione Epistolæ quam ad me ipsum direxistis, superbæ appellationis verbum, Universalem me Papam dicentes imprimere curastis. Quod peto dulcissima mihi Sanctitas vestra ultra non faciat: quia vobis subtrahitur quod alteri plusquam ratio exigit præbetur. Nec honorem esse deputo in quo fratres meos honorem suum perdere cognosco. MEUS NAMQUE HONOR EST FRATRUM MEORUM SOLIDUS VIGOR. Tunc ego vere honoratus sum cum singulis quibusque honor debitus non negatur."

It is right that your Excellencies should for a moment reflect that even the title of "Universal Bishop" was regarded by this great Pontiff as unbecoming the Bishop of Rome, and injurious to the other Bishops. What then would Gregory say if he could see his successors arrogating to themselves not the *title* merely, but the *reality* of Universality? What would he say could he see them making all the honour of the Papacy to consist in being themselves the only Bishops? Surely he who thus spoke and wrote had a far different idea of the Primacy of S. Peter to that which prevails at the present day in the Court of Rome. Assuredly he thought that the preservation of the authority of the Bishops in all its original vigour did not make the Pope any the less Primate of the Church; and that by reserving to themselves that which CHRIST and His Apostles imparted to all the Bishops, the Roman Pontiffs did but encourage vanity and occasion discord. "If," writes S. Gregory, "if your Holiness calls me universal Pope, you deny yourself to be what you assert to be mine only. But away with this! away with words which serve but to inflate our vanity, and to wound charity!"

In a letter written to John, Bishop of Syracuse, in Sicily, Gregory the Great declares that the Papal Primacy does not

consist in compelling all Provinces to observe the rites and customs of the Roman Church; that, on the contrary, it is folly for the Pope to imagine that when he has once obtained the Primacy over the Bishops, all must learn from him and he from no one[1]: "As to what they say of the Church of Constantinople, who doubts its being subject to the Apostolical See? Nevertheless if it, or any other Church, hath anything that is good, I am prepared to follow my inferiors in what is good, whilst I forbid them what is unlawful. FOR HE IS A FOOL WHO THINKS HIMSELF HIGHEST, TO THIS END—THAT HE MAY BE ABOVE LEARNING THE GOOD WHICH HE HATH SEEN." We may at least learn this much from this letter of S. Gregory, that it is not the same thing for a Bishop to maintain and defend the customs and rites of his Church as to oppose himself to the Primacy of Rome. "Non omnes Ecclesiæ consuetudines ex Romanâ petendas esse docet hæc epistola" is the inference drawn by Peter Gunssaville, the celebrated modern editor of these epistles.

Our present subject is one of such importance that it is necessary to examine with still greater care the opinions left by the holy Fathers concerning it.

S. Cyprian, Archbishop of Carthage, whether we consider the remoteness of the age in which he lived, so near to the time of the Apostles, or the minuteness with which he describes the excellences of the Primacy and Episcopacy, past all doubt, holds the first place. I have, then, in the body of the work, carefully examined many weighty authorities taken from his writings. I shall therefore only allege here one passage of equal force, where he shews strongly, that the essence of the Primacy does not consist in the Pope being the only legislator in the Church, and the supreme arbiter of the Bishops, nor in the latter being obliged to pay to Rome a blind obedience, which neither inquires into nor examines anything. In his seventy-first Epistle, addressed to Quintus, Bishop of Mauritania, he says thus:—"As to customs, [Rome] must not lay down the law by authority, but must overcome by weight of her arguments. For neither did Peter, whom the LORD appointed as the first, and upon whom He built His Church, when Paul afterwards con-

[1] S. Greg. Tom. viii., Ep. ix. 12.

tended with him about circumcision, insolently claim aught for himself; or arrogantly presume anything so as to say that he held the Primacy and that all later converts ought to obey him. Nor did he despise Paul because he had been originally a persecutor of the Church, but he received the counsel of truth, and easily agreed to the lawful reasoning of Paul, leaving indeed to us a document of concord and patience, that we should not obstinately cling to our own things, but rather consider those things our own, which are sometimes usefully and beneficially suggested to us by our brethren and colleagues, if only they be true and lawful."[1]

From the modesty with which Peter endured the reproof of Paul and embraced his doctrine concerning the non-obligation of the Mosaic law, not considering it any injury to the Primacy to see himself rebuked and taught by an inferior, Cyprian gathers that the Successors of Peter ought not to govern as despotic monarchs, whose will is to stand in the place of reason, and that the Bishops ought not to be so prepossessed with the judgment of the See of Rome as to consider it as unlawful for them to oppose or disobey it; since the government of the Church is not a despotic government, not a government of domination or of empire, but a government of modesty, of ministry, of humility: a government in which it is not permitted to one alone, to command or to define, but a government in which the votes of colleagues must always be attended to, and in which no one can separate himself from the judgment of his fellows. This was plainly taught by CHRIST Himself, as we have just now shewn from the mouth of S. Bernard.—"The kings of the Gentiles exercise lordship over them: and they that exercise authority upon them are called benefactors. But ye shall not be so; but he that is greatest among you, let him be as the younger; and he that is chief, as he that doth serve."[2] S. Bernard to Eugenius III.:—"It is plain, lordship is forbidden to the Apostles. Go, therefore, and dare, yourself the lord, to usurp the Apostolate, or dare, yourself the Apostolic, to usurp the lordship; you are plainly prohibited from one or the other; IF YOU DESIRE TO HAVE BOTH AT ONCE, YOU WILL LOSE BOTH."

To S. Cyprian of Carthage we add S. Augustine, Bishop of

[1] S. Cyp., p. 127. [2] S. Luke xxii. 25, 26.

Hippo, also in Africa. Is there perchance at the Court of Rome any Theologian who has a more sound and correct idea of the Primacy of S. Peter than Augustine had? I suppose that no one will venture to compare himself with a Doctor so illustrious and so holy. Well then: this Augustine, and with him two hundred and fifteen of the Bishops of Africa, assembled in Synod at Carthage, in 418, openly protested (and that, too, in the presence of the Legates of Pope Zosimus,) that no authority short of that of an Œcumenical Council like the Nicene, could oblige him and his colleagues to alter the discipline in the case of appeals, contrary to the custom of the African Church up to that period. Augustine, Bishop of Hippo, said:—"AND WE DECLARE THAT WE WILL ADHERE TO THIS, SAVING A MORE DILIGENT INQUIRY INTO THE ACTS OF THE SYNOD OF NICÆA."[1]

A few years before Augustine had written to Glorius and Eleusius, when speaking of the celebrated case of Cecilianus, Archbishop of Carthage, he declares it to be an established doctrine that the Donatists could appeal to a General Council, even after the sentence passed by Pope Melchiades in his Synod at Rome, and that there the question might be finally discussed and decided. "Ecce putemus illos Episcopos QUI ROMÆ JUDICARUNT, non bonos judices fuisse. RESTABAT ADHUC PLENARIUM ECCLESIÆ UNIVERSÆ CONCILIUM, ut si male judicasse convicti essent, eorum sententiæ solverentur."[2]

The inference to be drawn from these passages of S. Augustine, I leave to the consideration and judgment of your Excellencies. For it is time for me to furl the sails of this discourse, and having hitherto shewn in what the Primacy does *not* consist, to pass on to the consideration of what it really does consist: an arduous undertaking! a perilous adventure! He only will regard it as not arduous who is ignorant how little, nay, how nothing, is debated on this subject in the Schools. He only will regard it as not difficult who forgets that already in the fifth century it was said by a good judge, "Aures Romanorum quadam teneritudine plus trahuntur."[3]

Nevertheless, guided by the light which has been left to us on the subject by a Cyprian, an Augustine, a Gregory, I assert

[1] Justel., Tom. i., p. 143. [2] S. August., Tom. ii., p. 97, Ep. xliii. c. 2.
[3] Life of S. Hilary of Arles by S. Honoratus, ch. xvii.

that the essence of the Primacy is that which S. Bernard, Abbat of Clairvaux, expressed in few words to Pope Eugenius, in the very passage lately quoted: "What did the Apostle Peter leave to thee? He could not give to thee what he did not possess himself; that which he possessed he gave to thee, THE CARE OF ALL THE CHURCHES." Such are the limits within which S. Bernard confines the Primacy of the Pope—to be an inspector, a general superintendent of all the Bishops of all the Faithful of all Churches. But in what does the Mellifluous Doctor make this inspection and general superintendence of the Pope to consist? Does he make it consist in being supreme Arbiter of Kings and Princes, in his power to depose one and enthrone another? Nothing of the sort: nay rather he teaches that it is an usurpation of the rights of others, for the Pope to intermeddle and judge in things relating to secular states and dominions, that it is a line of conduct totally at variance with the spirit and practice of the Apostles, an abuse of the Keys of the Church, the proper objects of which are men's consciences, not their estates. "They will not shew, I think, when, at any time, any one of the Apostles sat as a judge of men, a divider of boundaries, or a distributor of lands. Your power, therefore, is over crimes, not over possessions. These weak and worldly matters have their proper judges, the Kings and Princes of the earth. Why do you invade the boundary of another? Why extend your sickle to another's harvest?"[1]

Does he make it consist in having at the Court of Rome a multitude of Tribunals whereto innumerable parties flock from the whole world, some to obtain benefices, some to sue for dispensations? Nothing less. Rather he says that it is an occupation unfit for a successor of the Apostles to listen to so many claims and suits, and for the Chair of S. Peter to be made like the Prætorium of the Romans. "What can be more servile and unworthy, especially of the Roman Pontiff, than to labour about such matters, I will not say every day, but every hour in the day? And, indeed, the laws daily resound in the Palace, but they are the laws of Justinian, not of GOD. Is that, too, right? Look you to it. I am deceived if this perversity do not bring you into trouble."[2]

[1] S. Bern. de Con., Book i., ch. 6, p. 3. [2] Ibid., Book i., ch. 4, p. 2.

Perhaps he makes it consist in this, that the Papal dignity alone has God for its Author, or that the Pope alone receives his jurisdiction from God, and that the Bishops do not? This, says S. Bernard, is an error, and an error contrary to Scripture. "Thou errest, if thou thinkest that thine Apostolic power, as it is the *chief*, so it is the *only* power instituted by God. If thou thinkest so, thou differest from Him Who said, 'There is no power but of God.' Therefore thy power is not the *only* power ordained of God: there are powers below thee of various degrees in inferiority."[1]

Perhaps he places it in the Pope's power to despoil the Bishops of their rights and liberties, to grant excessive exemptions, to reserve even the most trifling causes to himself, and to disturb the order of the Ecclesiastical Hierarchy? On the contrary, he teaches that the Pope is bound to preserve to each what is proper to his dignity, under pain of being an usurper and unjust detainer of what is not his own. "You have been appointed to preserve to all persons the rank and order of their honours and dignities, not to envy them these; as one of you says, 'Honour to whom honour.'[2] Dost thou think that it is lawful for thee to mutilate the Churches in their members, to confound their order, to disturb the boundaries which thy Fathers assigned? If justice consists in preserving his own rights to every man, how can it possibly become a just man to take away from any one those rights?" He teaches that it is an abuse of the plenitude of the Papal power to exempt Abbats from the jurisdiction of their Bishops; Bishops from that of their Metropolitans; and Metropolitans from that of their Patriarchs. "I declare the murmurs and complaint of the Churches . . . . Abbats are withdrawn from their Bishops, Bishops from their Archbishops, and Archbishops from their Patriarchs or Primates. Is this a good aspect of affairs? It is a strange thing if it can even be excused. By frequently acting thus you prove that you possess the plenitude of *power*, but not so, perchance, the plenitude of *right*. You act thus because you have the power to do so, but whether you *ought* to act thus is another thing." He teaches that it is conduct unworthy of the

[1] S. Bern. de Con. Book iii., ch. 4, No. 17, p. 13.

[2] Ibid., Book iii., ch. 4, No. 14, p. 12.

Supreme Pontiff, possessing as he does such ample and sovereign power, not to be contented with it without arrogating to himself, at the expense of the Bishops, the exercise of such trifling acts of jurisdiction, that, in order to express exactly the terms of S. Bernard, I scarcely know how to designate them better than by calling them trifles. "What can be so unworthy of you as, holding as you do the whole, not to be contented with the whole unless you can also make your own a few minute and trifling portions of the universality entrusted to you?" He teaches that for the Pope to invert the order and disturb that harmony which by CHRIST'S institution, ought to exist in the Church, is to make a sort of monster of the body of the Church. "You make a monster if you dispose the members of CHRIST'S Body otherwise than He disposed them."[1] Lastly, he teaches that neither is the Roman Church the Mistress of the other Churches, nor is the Pope Lord over the Bishops. "You should before all things consider that the holy Roman Church, over which, by GOD'S grace you preside, is the Mother, not the Mistress, of the Churches, and that you are not Lord over the Bishops, but are yourself one of them."[2]

It is evident, then, that the supreme inspection and superintendence in which S. Bernard makes the primacy, essentially, to consist, means no more than that the Roman Pontiff is a Prelate superior to all other Prelates, a chief, a first President of all the Bishops, to whom, by virtue of his Primacy, it belongs to watch over the whole Church, in order that each one may fulfil exactly his proper duties and ministrations; that is, in order that the body of the Church may be preserved in that order and harmony in which CHRIST and his Apostles left it, by maintaining uninjured the rights of each order, and by facilitating to each member the proper functions of its Hierarchy.

This idea of the Primacy is strongly confirmed by observing the intention for which CHRIST instituted it. All the Fathers agree that the end was nothing else than that CHRIST sought to avoid schisms, and to preserve unity. Thus, S. Cyprian in in his Book *de Unitate*, says, "Although He assigns an equal

[1] S. Bern. de Con., Book iii., ch. 4, No. 17, p. 13.

[2] Ibid., Book iv., ch. 7, No. 24, p. 18.

power to all the Apostles, yet that He might indicate Unity, He by His authority caused the origin of that Unity to begin from one. Therefore the other Apostles were what Peter was, endued with the like fellowship of honour and power; but the beginning springs from unity that the Church may be shewn to be one."[1] S. Jerome against Jovinianus; "One was chosen out of the Twelve, that a chief having been appointed, all occasion of schism might be done away."[2] And S. Augustine upon S. John, "Therefore one for all, because unity is in all."[3] Now from this object of the Primacy its essence is plainly discoverable. For if CHRIST our LORD instituted one chief or visible head in order to prevent schisms in the mystical body of the Church, and to preserve the union of all the members, it is plain that the duty of that chief or head is not to appropriate to himself the operations of the other members, but so to influence them that each member may abide in his place and exercise the functions proper to his office, giving to all for the *primum mobile*, the Divine Law and the Canons.

This notion of the Primacy is further confirmed by observing that the ancient Pontiffs chiefly evinced the power and grandeur of their character in causing the canons to be executed, and in preserving to each one his proper rights. S. Gelasius in his letter to the Bishops of Dardania made the sovereignty and majesty of his Primacy to consist in this: "The statutes of every Synod, which the consent of the Universal Church has confirmed, ought to be fulfilled by no See more strictly than by the First See."

And Gregory the Great, "Far be it from me to infringe, in any Church, *statuta majorum consacerdotibus meis:* FOR I DO AN INJURY TO MYSELF IF I DISTURB THE RIGHTS OF MY BRETHREN."[4] Again, S. Leo IV., cited by Gratianus, "Therefore, by GOD's permission, we are made Pastors over men, that we should in no way exceed what our Fathers have laid down in the holy canons."[5] Hence if the Roman Pontiff shall go beyond these limits there will be nought but schism, dissension, and discord, in the Church of GOD.

[1] S. Cyp., p. 195.
[2] S. Jerome, Tom. ii. p. 279.
[3] S. Aug., Tom. iii. p. 801.
[4] Bossuet Defen. Decl., Tom. ii. p. 120.
[5] S. Greg., Tom. vii. p. 155.

Pope Benedict IX. knew this well, when he wrote thus to the Gallican Bishops: "I profess to all my fellow-Bishops all over the world, that I had rather help and console than contradict them. FAR BE SCHISM FROM ME AND FROM MY FELLOW-BISHOPS." And, long before, the holy Pontiff Sixtus III., in Epistle 10, to the Bishops of Illyricum: "As the whole body is governed by the head, so the head itself, unless it be sustained by the body, loses its firmness and vigour." And Pope John VIII. in the Epistle to the Emperors: "The condition and order of the whole family of the LORD will be shaken if that which the body requires be not found in the head, and thence it will happen that all Ecclesiastical discipline will be dissolved, and all order disturbed."

For this reason also, the ancient Pontiffs on the day of their coronation made a public oath to observe all the Canons received by the Universal Church. And, in the same way, the Bishops at their consecration swore (and do still swear,) to be obedient to the Pope; but it is obedience *secundum Canones*, obedience *servato ordine suo*. These are the two pivots of all discipline: first, that the Pope be guided by the Canons in issuing his mandates; and secondly, that the Bishops be guided also by the Canons in obeying him. Hence Eugenius IV. in the bull, *Lætentur cœli*, in which he defines the Roman Pontiff to be "Primate of the Church Universal, Vicar of CHRIST, Father, Doctor, and Pastor of all the Faithful," presently adds, "saving the privileges of the Patriarchs and their rights." And it is not to be imagined that by these *privileges* are meant merely favours granted by the Pope, for S. Leo calls the Primacy of Peter, the *Privilege of Peter*, and the Episcopal rights are called the *Privileges* of the Churches, by the Council of Nicæa, in Can. 6; and by the Council of Ephesus, Can. 8, "Liberties granted by CHRIST our Redeemer to the body of Bishops."

The Roman Pontiff is therefore the Chief and Head of the Whole Church, but so are the Bishops in their Dioceses. His is the *first* voice in all controversies of faith and discipline, but it is not the *only* voice; the Bishops also have a voice in these matters, and a *decisive* vote, not merely in Synod, but when dispersed, in their Dioceses, throughout the world. He may make and promulgate laws throughout the Church, but the

Bishops also may make and promulgate them in their Dioceses; he may repeal and rescind Episcopal laws and constitutions which are opposed to the universal Canons, but the Bishops also have right and authority to examine and consider whether the laws and constitutions of the Pope are opposed to the Canons of the Œcumenical Councils, or the lawful customs, rights, and liberties of the Provinces. The Roman Pontiff holds it for certain that when he solemnly defines a point, the HOLY SPIRIT assists him, so that he cannot err; but the Bishops also ought to look for the same assistance, in their degree, when they govern their flocks, fulfilling the duties of good shepherds: for it is a truth of the Gospel that "where two or three are gathered together in the Name of CHRIST, there is He in the midst of them." The African Bishops believed in this assistance as a certain truth, when they wrote to Pope Celestine with respect to Appeals. And the Fathers of another African Council declare it to be common to the whole Church when they say, "We believe that the HOLY SPIRIT Who hath spoken in the Holy Roman Church, hath also spoken in our own Churches,—for they remembered the words, 'it seemed good to the HOLY GHOST and to us.'"[1]

[1] Additional Proofs. 1. "Inspiratione hoc DEI credimus provenisse, Sanctissimi Fratres, ut per ordinationem Domini gloriosissimi Filii nostri Regis ex utroque Concilio conveniremus in unum ut non solum de visione alterutra gratulemur, sed etiam ea quæ ad ordinationem et disciplinam Ecclesiarum pertinent, pariter conloquamur. Scriptum est enim in Evangeliis, dicente Domino, ubicunque fuerint duo vel tres congregati in nomine Meo, ibi ero in medio eorum."—S. Martin, Archbishop of Braga, at the second Council of Braga held in 572. Labbe.

2. "Revera si secundum dictum Dominicum, ubi duo vel tres congregati fuerint in nomine Ejus, ibi est Dominus in medio eorum; quanto magis ubi viginti, aut triginta, aut multo amplius congregati fuerint."—S. Agobardus of Lyons, who lived in the ninth century, in his book, *Adversus Legem Gundobardi*, cap. 12.

3. "Quia sunt qui Gallicanos Canones aut aliarum regionum putant non recipiendos, eo quod Legati Romani seu Imperatoris in eorum constitutione non interfuerunt, restat ut etiam Sanctorum clarissimorum Patrum doctrinas et expositiones diversosque tractatus, ut sunt Cypriani, Athanasii, Hilarii, Hieronymi, Augustini, doceant non esse recipiendos; quia cum hæc tractarent vel exponerent, Legati Romani sive Imperatoris non aderant. Melius mihi sentire videntur, qui secundum Domini dictum, ubi duo vel tres in nomine Domini congregatos agnoscunt, Dominum quoque inter eos affuisse non dubitant, et eum qui Ecclesiam non audierit, sicut Ethnicum et Publicanum habendum credunt. Ubicunque enim Catholici Ecclesiarum Rectores, pro Ecclesiarum utilitatibus, cum DEI timore, in Ejus nomine et honore, conveniunt: quidquid consonanter

Lastly, the Church of Rome is the *principal Church*, as S. Irenæus, S. Cyprian, and S. Optatus call her, but she is not the *only* Church of CHRIST,—the others are so likewise; and all of them together, *with* the Church of Rome, constitute One, Only Church, "Holy, Catholic, and Apostolic," as we confess in the Creed. In the Council of Florence, Bessarion, Archbishop of Nicæa, who was subsequently made a Cardinal,[1] spoke thus:—"We know indeed what are the rights and prerogatives of the Roman Church, but nevertheless we know also what limits her prerogatives have, since HOWEVER GREAT BE THE FACULTIES WITH WHICH THE ROMAN CHURCH IS ENDOWED, SHE IS INFERIOR TO AN ŒCUMENICAL SYNOD AND THE UNIVERSAL CHURCH." To what purpose then are we taught that the Roman Pontiff is the sole judge of dogmas of Faith and in the administration of Discipline? To what purpose are we persuaded (as in one of the Dictates of S. Gregory VII.) that there is no other name, no other power in the Church of GOD, than that of the Pope?

The French Bishops were very far from receiving this doctrine in the ninth century, who, when it was reported that Pope Gregory IV. was coming from Italy into France, in order to excommunicate all the followers of Louis the Pious (in opposition to his rebellious sons), boldly declared according to the Monk Aimoin, Bk. v., ch. 15, "that they would by no means consent to his wish, but that if he came with intent to excommunicate, he should himself depart excommunicated, since the authority of the ancient Canons was otherwise."

Robert [Grostête] Bishop of Lincoln, was also very far from any such flattery, who, when Innocent IV., in 1253, endeavoured to reserve to himself certain Prebends in England, opposed him courageously, and wrote to him that admirable letter which Matthew Paris, a contemporary, gives, in substance as follows,—That the authority of the Apostolic See extended only

Sacris Scripturis statuunt nulli procul dubio spernenda, immo veneranda omnibus esse debent."—The same: *De Dispensatione Ecc. Rerum*, ch. 20.

4. "Præterea habemus assistentem nobis etiam CHRISTUM, neque enim Ecclesiam ea nobis conditione tradidit ut relinqueret. Semper assistit."—Arnulphus of Lisieux, at the Council of Tours celebrated in 1163 by Alexander III.

[1] And, we may add, who was all but Pope.—TR.

to the issuing of commands which were just and agreeable to the Sacred Canons, and that, the reserves which the Pope demanded not being such, he could not and ought not, by the obligation of his office, to admit them: "On which account, I entirely, filially, and obediently, refuse to obey, contradict and rebel against the things contained in the said letters." And that your Excellencies may see that there ever have been, at the Court of Rome, men who would do justice to the Bishops, the same writer thus continues his narrative. "When these things were recited amongst the Cardinals, they with difficulty restraining the Pope's violence, said to him: It is not expedient for us to enact any hard measure against the Bishop, for if we would speak the truth, WHAT HE SAYS IS TRUE. We cannot condemn him; he is a Catholic, yea, and one most holy; more religious than we, more holy than we, so that amongst all the Prelates there is not a greater than he is, yea, not one equal to him. All the Gallican and Anglican clergy know these things, and our contradiction of them will avail nothing."

Again, Gerson was far from entertaining any such notion when he wrote thus: "The Pope cannot change the Hierarchical Order of the Universal Church, but in many cases it is lawful to resist him to the face and to demand, why dost thou so? As for instance, in exemptions which are clearly hurtful, and if he desires to burden the Prelates and Churches which are subject to him with intolerable expenses, and altogether to deprive them of their liberties."

More than three centuries before this, Godfrey of Vendôme had written this memorable sentence: "That is certainly not lawful to the Roman Church after Peter, which was not lawful to Peter himself: the power was given to Peter by CHRIST, of binding those things which were to be bound, and of loosing the things which were to be loosed; no permission was given him to loose that which was to be bound, and to bind that which was to be loosed."

It is indeed a source of deep sorrow, when our LORD CHRIST ordained all His Apostles in this form,—"As My Father hath sent Me, so send I you, go ye, teach, preach, and baptize,"—to see one Peter de Palude arise, thirteen centuries after, to teach that *Peter alone* received jurisdiction immediately from CHRIST,

and to find Cardinal de Torquemada afterwards adopting the doctrine; and Bellarmine calling Palude's work, "a wonderful Treatise."

And it is not less scandalous, since the Church is, according to the teaching of the HOLY SPIRIT, "the Bride of CHRIST; ("this is a great mystery, but I speak concerning CHRIST and the Church;")—since the same Church, according to S. Augustine[1] is "a Sovereign Queen," according to Tertullian "our Mother and Mistress," and which is more, since She is the Sovereign Arbitress, before whose Tribunal CHRIST commanded Peter to impeach the incorrigible, ("if he will not hear thee tell it to the Church;")—since the Church is such, it is, I say, not less scandalous to hear in these latter days a Cardinal Cajetan endeavour to prove that with respect to the Pope, the Church is a *slave*—a *born slave*:—"Ecclesia serva nata Romani Principis[2]": and

[1] In Psalm, 45. § 20.

[2] Additional Proofs. 1. "Adulterari non potest Sponsa CHRISTI: incorrupta est et pudica. Unam domum novit: unius cubiculi sanctitatem custodit."—S Cyprian. *de Unitate.*

2. "Tibi commissa est Sponsa CHRISTI, amice Sponsi: tuum est eandem Uni Viro virginem castam exhibere CHRISTO."—S. Bernard, Ep. 191., to Innocent, tom.ii.; also Ep. 237. to Eugenius III.

3. See also S. Optatus, Bk. 2, against the Donatists, at the beginning.—S. Jerome, Bk. 1, on Jeremiah.—S. Fulgentius, in the Ep. to Proba, ch. 5.—S. Agobardus, in his Epistle to the Lyonnese.—Pope Leo IX., in his Epistle to Robert, Abbot of the *Chaise-Dieu*, in Auvergne, &c., &c., &c.

4. DOMINA MATER ECCLESIA.—Tertullian, *ad Martyres.*

"Dei Ecclesia QUÆ MATER ET DOMINA NOSTRA EST."—Pope S. Gregory VII., Bk. v. Ep. 10.

"Non habebit DEUM Patrem, qui Ecclesiam non habet matrem."—S. Augustine.

5. The most decisive text upon this subject is that of our LORD Himself where, speaking of S. Peter, He says, "If he will not hear thee, tell it to the Church," which evidently proves that the Tribunal of the Church is superior to that of the Pope, and that the Church may be, and verily *is*, Judge and Arbiter of the Pope, as well as the rest of the Faithful.

The same truth was signified in the definition of the Council of Nicæa against the Arians, "Sic credit Ecclesia Catholica."

Also, by the Second General Council of Constantinople, which condemned the Three Nestorian Chapters, in spite of the opposition of Pope Vigilius, and by the Sixth General Council in the same city, in which Pope Honorius was *anathematized* as an abettor of heresy. And again, by the Council of Rome, in 964, in which Pope John XII. was deposed for his atrocious crimes; also the Council of Constance, which tried, condemned and deposed, John XXIII. and

these are the works which are in repute at Rome. We do not find these amongst the list of prohibited books; these are the volumes which form the *Bibliotheca Maxima Pontificia* of the illustrious Rocaberti,[1] a work which I might with more propriety designate, "The Repository of the opinions of the Roman Court."

CHRIST our LORD clearly gives us to understand by S. Luke, that the government of His Church ought to be very different from that of the Monarchies and Republics of this world; "the Kings of the Gentiles exercise lordship over them, BUT IT SHALL NOT BE SO WITH YOU." There is no commoner doctrine with the Holy Fathers: yet how few there are, in or out of the Roman Court, who do not assent to the opinion that the Pope holds the same position with regard to any ecclesiastic, that a secular Prince does with regard to his subjects; that with respect to the Bishops, he is as a King with respect to his magistrates; that as a King can at his will limit or restrain the jurisdiction of his Senators, so can the Pope, at his will, limit and restrain the jurisdiction of the Bishops; that as a King in temporal matter recognizes no superior save GOD, so the Pope, in all matters relating to the government of the Church, is as much a Sovereign, as absolute, as despotic; that, as says the gloss on the chapter *Quanto personam, de translatione Episcopi,* no one can say to him, "why dost thou so?" A gloss which Gerson calls "the deadly poison of the ancient flattery," and in an-

substituted Martin V. Also, that of Basle, which, during the period when it was considered legitimate, ordered the citation of Pope Eugenius IV. in Sessions 8 and 9, and declared him contumacious in Session 14. Also by the Council of Arles, in 314, which in its Synodical letter to Pope Silvester, styled the Church, "Judge conjointly with CHRIST," "Ideo JUDICE DEO ET MATRE ECCLESIA, quæ suos novit et comprobat, damnati sunt."

6. "Doleo de infamiâ Cathedræ Sancti Petri. Jam vestra culpa est, si vos deviastis de verâ fiduciâ et primam fidem irritam fecistis. MERITO VESTRI JUNIORES VOBIS RESISTUNT ET MERITO VOBISCUM NON COMMUNICANT, donec memoria perditorum deleatur. VESTRI ERUNT JUDICES qui semper Orthodoxam fidem servaverunt, licet juniores vestri sint."—S. Columba, to Pope Boniface III.

[1] John Thomas de Rocaberti, General of the order of S. Dominic, and Archbishop of Valentia, born in 1624. He has left besides the work mentioned in the text, two spiritual Treatises in Spanish, a work in 3 vols. fol., *De Auctoritate R. Pontificis*, and several letters. His chief work is the Bibliotheca, in 21 vols. fol., containing the treatises of a large number of authors in defence of the claims of the Roman See.—TRANSL.

other place, "a monstrous and horrible stumbling-block, placed by flattery in the way of the Word of God." Whence doubtless it arose, that the Bishops found themselves in Gerson's time reduced to the condition of "*painted images*," or, as the Spanish Bishops complained as the Council of Trent, "reduced *to nothing*."

Who then would not mourn over such a corruption of ideas? who would not feel for such a depreciation of the Episcopal Order, such a breach in the Ecclesiastical Hierarchy, over sentiments so opposed to antiquity? Only one who is altogether a stranger to antiquity, who knows nothing of the holy Fathers.

I sincerely declare to your Excellencies, that it was this decay of Episcopal jurisdiction, alike dishonourable to the Bishops, and injurious to their people, which alone induced me to take up the pen to write the Book which I here dedicate to you; a Book which, though especially relating to the impediments to marriage, yet will in its principles shew equally well how far the authority of the Bishop may be extended in other points of discipline. I have styled it an "*attempt*," or "*essay*," not because I have any doubt of the doctrines which it sets forth, and which both I myself and my censors hold as certain; but in order to accommodate myself to the prejudices of the country in which I write, which forbid any one to make sure of victory.

Your Excellencies will perceive in this work, that I do not build my assertions on mere speculations, or empty declamations. The Scriptures, the Fathers, the Councils, History, the Theologians of the greatest reputation, these form the foundation on which all my doctrines are built. I have avoided all bitter criticisms and impertinent scoffing, for my object is to fight by reason and to conquer with truth. If the doctrines which I have set forth, meet with the approbation of your Excellencies, it will be the greatest recommendation that the book can have. If they do not meet with it, my consolation must be the good intention with which I have written and published it; and it is possible that posterity, not more wise, but less under the influence of passion, may be induced to receive what is now rejected.

I cannot, however, persuade myself that your Excellencies will reprove a book, the honour of which is none other than that of the Bishops themselves, and the doctrine of which cannot be

condemned, without injury to the Episcopate. And that, chiefly, because your Excellencies cannot be ignorant that by the fourteenth Canon of the Eighth General Council, the Bishops were directed, under pain of suspension, to make themselves even politically respected by the great ones of the world, and that the glory of religion, as much as that of the State, is interested in the integrity and maintenance of the Episcopal Rights. For, as the glorious S. Francis de Sales, Bishop of Geneva, has said, "It will be especially to the glory of GOD, that the Episcopal Order be recognized for what it was when instituted and what it is by nature." And more than 900 years ago, it was remarked by the Emperor Charlemagne, that the respect and security of Monarchies depended upon the Bishops preserving their Rights uninjured, and their authority entire. "We command and order that no person, which GOD forbid! should do anything against the Bishops, either by levity or seriously, WHICH THING TENDS TO ENDANGER OUR WHOLE KINGDOM. And that all men acknowledge the sacerdotal name, power, vigour and dignity."

Your Excellencies'

Most Humble and Reverent Servant,

ANTONIO PEREIRA.

Lisbon, July 14th, 1766.

INTRODUCTION.

In the beginning of August, A. D. 1760, His Majesty by his Royal Decree ordered, under heavy penalties, that no one of his subjects should hold any intercourse with the Court of Rome, either in spiritual or temporal matters. This is the usual method by which the Sovereign Majesty of Catholic Princes (without offence to religion or the Primacy of S. Peter,) has been accustomed to resent the injuries and slights of the Roman Court. To say nothing of other, more ancient, examples, King Louis XI. in France dealt thus with Pope Sixtus IV. in 1478; Louis XII. with Pope Julius II. in 1510; Henry II. with Pope Julius III. in 1551; and Henry IV. with Pope Clement VIII. in 1591. So in Spain the Emperor Charles V. in 1526, treated in like manner Pope Clement VII., and his son, King Philip II., Pope Paul IV. in 1556; also Philip V., Pope Clement XI. in 1709. In Portugal, moreover, King John V. had recourse to the same measures against Pope Benedict XIII. in 1728, whose example our august monarch alleged and followed.

Moreover, the singular kind of retaliation made by the most Christian King Charles IX. in 1563, should be remarked, when by command of Pope Pius IV., precedence was given to the ambassador of the Catholic King Philip II. at the Council of Trent. Charles commanded his ambassador after stating

warmly the injury done by the Pope to himself, the first-born son of the Church, to conclude his speech in the face of the whole Council, in this piquant, but at the same time delicate, manner:—"The Apostolical See, the holy Pontiffs, and the Holy Church, to increase whose dignity our ancestors shed their blood, we venerate, revere, and receive. But the rule of Pius IV. we refuse, and whatever be his judgments and opinions, we altogether reject, deny, and despise them." [1]

The justification of these ruptures with the Supreme Pastor was given more than 450 years ago by the famous Dominican, John of Paris, who in his Tract, "De Potestate Regiâ et Papali," chap. 20, speaks thus:—"It is lawful for a Prince to defend himself from the abuse of the spiritual sword in any way he can, even with the temporal sword; more especially where such abuse of the spiritual sword tends to the detriment of the Republic, for the care of which the King is responsible, for otherwise he would bear the sword in vain." [2] One hundred and twenty years after this, the great and pious Gerson laid down the same doctrine in his Moral Rules, under the head of the Precepts of the Decalogue, where he says:—"By the law of nature it is lawful to repel violence by violence, so that any person injured in fact by any other person of whatever dignity soever, even the Pope himself, and having no means of righting himself by law, has a right to resist the offender according to the nature of the injury, *i. e.*, as far as is requisite and sufficient to defend himself." [3] And immediately after, he says:—"Many cases may occur in which a man assuming to be Pope, and acknowledged as such by the Church, may lawfully be killed or

[1] "Sedem Apostolicam, Sanctos Pontifices, Sanctam Ecclesiam, pro cujus dignitate augenda majores nostri sanguinem fuderunt, veneramur, reveremur, suscipimus. Pii autem IV. imperium detrectamus: quæcumque sint ejus judicia et sententiæ, rejicimus, respuimus, et contemnimus."—Goldast. Tom. iv. Cons. Imp. p. 573.

[2] "Est licitum Principi abusum gladii spiritualis repellere eo modo quo potest, etiam per gladium materialem: præcipue ubi abusus gladii spiritualis vergit in malum Reipublicæ, cujus cura Regi incumbit: aliter enim sine causâ gladium portaret."—p. 128, Ed. Richer.

[3] "Jure naturali vim vi repellere licet: sic quod impetitus aliquis à qualicumque persona cujuscumque dignitatis etiam Papalis via facti, et non habens juris remedium, fas habet injurianti de facto resistere secundum qualitatem injuriæ, scilicet quantum requiritur et sufficit contra illud ad sui tutamentum."

imprisoned by a subject, or set aside by some kind of appeal from him, or withdrawal from his obedience; unless it happens that some constitution, not merely human, but divine and revealed, can be brought forward in opposition to the prejudice of this natural right."[1]

In this sense, too, must be understood the discreet expressions in which the French historian De Thou, in his first book, describes the rupture between Charles V. and Clement VII. "The Emperor Charles in order to avenge the affront offered him by Clement VII., entirely abolished the authority of the Pope's name throughout Spain; the Spaniards thus leaving an example to posterity that it is possible to maintain Ecclesiastical discipline for a time, without the authority of the Pontifical name."[2]

The Theologians of our King John IV. treating of this matter 115 years ago, made use of terms even more expressive and effective, in a book, entitled, "*Balido das Ovelhas de Portugal,*" [The bleating of the Sheep of Portugal,] which was printed in Latin and in Portuguese, at Paris, in 1651. They assert, that "to Secular Princes belongs the power of jurisdiction, against and amongst subjects, and the power of protection as respects their subjects and foreigners, which they exercise in war; and also the 'economic' power against the exempt," (as are Ecclesiastics); "and that this power may well concur with the protective power of war, even against Ecclesiastics themselves. That this protective power belongs to the Prince as the Guardian and Defender of the State; and as such, it is his duty to repel injuries done to himself and his vassals, and not only those done, but even those which are feared, and also to defend his Royal dignity and its honour and reputation."[3]

1 "Casus multi esse possunt, in quibus aliquis se gerens pro Papâ, et pro tali habitus ab Ecclesiâ, poterit à subdito licite vel occidi, vel incarcerari, vel per modum quendam appellationis ab eo vel subtractionis à suâ obedientiâ declinari: nisi forte obstare monstraretur constitutio aliqua non humana solum, sed divina atque revelata, huic naturali juri præjudicans."

2 "Cæsar Carolus, ut injuriam sibi à Clemente illatam ulcisceretur, nominis Pontificii auctoritatem per omnem Hispaniam abolet: exemplo ab Hispanis posteritati relicto, posse Ecclesiasticam Disciplinam citra nominis Pontificii auctoritatem ad tempus conservari."

3 Balido das Ovelhas, pp. 213, 214.

From this principle all our own and most foreign Doctors have concluded that "in case of injury done to the King, or his Kingdom, his Majesty is obliged to use the economic power, in defending himself from and repelling the injury: to which end it is lawful to order all Portuguese subjects to withdraw immediately from Rome, and to return to their own country: to deprive of their pensions all residents at Rome, whether natives or foreigners, and to forbid the transmission of any money to the said Court, whether in the matter of business, of dispensation, or of rescripts."

As I write more for the ignorant than the learned, I will pause here to lay before the reader the doctrine of the famous Dominican, Cardinal Thomas de Vio, commonly called Cajetan, from the place of his birth. He, the chief of the Ultra-montane Theologians, in his Commentaries on the Second of the Second of S. Thomas, explaining, after the mind of the Angelic Doctor, wherein the character of schism consists, says thus: "In answer to the Second, observe that the command or judgment of the Pope may be set at nought in three ways: 1st. As to the thing adjudged or commanded. 2ndly. As to the person of the judge; and 3rdly. As to the office of the Judge. For even if any one should obstinately despise the sentence of the Pope from unwillingness to obey what he has commanded, he is not therefore a schismatic, albeit he grievously errs: for it frequently happens, that one may be unwilling to follow the commands of a superior, at the same time acknowledging him to be his superior. And if any one has cause to suspect the person of the Pope, and on that account refuses, not only his presence, but also judges immediately appointed by him, if he be ready to be tried on the same charge, before unsuspected judges; he is not to be held guilty of the sin of schism, or of any other crime. For the *person* of the Pope may govern tyrannically, and so much the more as he is more powerful, and has no fear of any one on earth. But when any one rejects the command or judgment of the Pope *as to his office*, refusing to recognize him as his superior, then is he properly a schismatic: and in this sense are to be understood the words of this clause and of the like. For the mere act of disobedience, however obstinate, does not constitute schism, unless it be accompanied with rebellion against

the *office* of the Pope or the Church, such as denying subjection to him, refusing to recognize him for superior, &c."[1]

The substance of what Cardinal Cajetan says is this, that to withdraw from the Pope and not to submit to his mandates when they are unjust or tyrannical, is neither schismatical nor sinful, provided that they who so withdraw or disobey, recognize the Pope as lawful superior in those spiritual matters which are reasonable.

IV. When in our own time, the Recourse to Rome was thus stopped, the Kingdom soon began to feel the want of Rescripts and Dispensations; whereupon our Theologians began to moot the question, What power is possessed by the Bishops in such a case? The necessity under which, in the course of seven years, many of the Nobility and Grandees find themselves, either of making ill-suited marriages, or of losing for want of heirs, their houses, titles, and estates, compelled certain Professors to give it as their opinion, that in such a conjuncture, the Bishops had the power to dispense with the impediments of consanguinity and affinity, which are of frequent occurrence in a Kingdom, in which the principal Nobility are almost all connected one with another, by near ties of relationship. But as none of these opinions went to the root of the matter, and were all founded on the presumed will of the Sovereign Pontiff, none of them, that I am aware of, has as yet obtained the approbation of the Bishops. And in

[1] In responsione ad secundum, adverte diligenter, quod recusare præceptum vel judicium Papæ contingit tripliciter. Primò ex parte rei judicatæ seu præceptæ: secundò exparte personæ judicantis: tertiò ex parte officii ipsius judicis. Si quis enim etiam pertinaciter contemnat sententiam Papæ, quia scilicet non vult exequi quæ mandavit; licet gravissimè erret, non tamen est ex hoc schismaticus. Contingit namque et sæpe, nolle exequi præcepta superioris, retenta tamen recognitione ipsius in superiorem. SI QUIS VERO PERSONAM PAPÆ SUSPECTAM RATIONABILITER HABET, ET PROPTEREA NON SOLUM PRÆSENTIAM EJUS, SED ETIAM IMMEDIATUM JUDICIUM RECUSAT, PARATUS AD NON SUSPECTOS JUDICES AB EODEM SUSCIPIENDOS, NEC SCHISMATIS NEC ALTERIUS CRIMEN INCURRIT. NAMQUE POTEST PERSONA PAPÆ TYRANNICE GUBERNARE; ET TANTO FACILIUS, QUANTO POTENTIOR EST, ET NEMINEM IN TERRIS TIMET ULTOREM. Cum quis autem Papæ præceptum vel judicium ex parte sui officii recusat, non recognoscens eum ut Superiorem, tunc propriè schismaticus est. Et juxta hunc sensum intelligenda verba Literæ hujus et similium. INOBEDIENTIA ENIM QUANTACUMQUE PERTINAX, NON CONSTITUIT SCHISMA, NISI SIT REBELLIO AD OFFICIUM PAPÆ VEL ECCLESIÆ, ita ut renuat illi subesse, illum recognoscere ut Superiorem, &c.

truth, without first considering the great powers possessed by the Episcopal Order from the first, without setting forth the practice of the earliest ages of the Church, without discovering the origin of the Papal Reservations, without showing that the Roman Pontiff could not, apart from the consent of the Body of Bishops, despoil them for ever of the power and exercise of those functions which, by Divine institution, are annexed to their character; without, finally, weighing the circumstances which render the dispensation just and necessary; without establishing, I say, these and other like principles, the discourse of Theologians cannot run smoothly, nor obtain the desired assent from timid minds.

V. Now, I do not imagine myself to be so wise, nor of such weight, that so many and such eminent Prelates as those who now fill the Sees of this Kingdom, must of necessity conform themselves to my opinion; but I hope, nevertheless, to show such light on the subject, and to bring forward such new examples, as shall make the doctrine referred to appear, not only very probable, but even safe in practice. Wherefore, I call this discourse, a Theological *Essay*—TENTATIVA THEOLOGICA, because, though it persuade not the will, it may enlighten the understanding. For the greater order and clearness, it is divided into two Parts. In the first are established the Principles, upon which I found my conclusion, that when recourse to Rome is hindered, either by the prohibition of the Prince, or by war, or by any prolonged schism, the power devolves upon the Bishops of granting dispensations in all cases ordinarily reserved to the Pope. The second will contain the doctrine and examples upon this matter, which have been left to us by the Doctors, Universities, and Prelates, of other Catholic Kingdoms.

THE FIRST PRINCIPLE.

THE EPISCOPAL JURISDICTION CONSIDERED IN ITSELF, THAT IS, IN ITS INSTITUTION BY CHRIST, AND APART FROM ANY LAW, USE OR RESERVATION TO THE CONTRARY, IS A JURISDICTION ABSOLUTE AND UNLIMITED IN RESPECT OF EACH DIOCESE.

PROOFS.

IN the Gospel by S. Matthew, xxviii. 18, we read that CHRIST said to His Apostles after His Resurrection, "All power is given unto Me in Heaven and in earth; Go ye therefore, and teach all nations, baptizing them in the Name of the FATHER, and of the SON, and of the HOLY GHOST: teaching them to observe all things whatsoever I have commanded you." And also in S. John's Gospel, xx. 21: "As My FATHER hath sent Me, even so send I you. And when He had said this, He breathed on them and saith unto them, Receive ye the HOLY GHOST: whosesoever sins ye remit, they are remitted unto them; and whosesoever sins ye retain, they are retained."

From these passages it is certain, in the first place, that by virtue of this mission which CHRIST gave to His Apostles, they were constituted Ministers of the New Testament, as S. Paul calls them,[1] *i. e.*, the Shepherds of His Church, and Administrators or Dispensers of all the Sacraments which the LORD Himself instituted, and of which He makes mention only of

[1] 2 Cor. iii. 6.

Baptism and Penance, — they being the most necessary to salvation. It is certain, in the second place, that this administration of the Sacraments includes not only the power of Order, but also that of Jurisdiction; that is, not only the power of consecrating the Body of CHRIST, and of absolving from sin, but also the administration of these and of the other Sacraments, the choice and mission of fresh Ministers, the power of establishing new laws concerning such administration of the Sacraments, and consequently, the power of dispensation in respect to such laws at all times when the advantage or necessities of the Faithful required it. Therefore S. Paul[1] explains the office of a Bishop to consist in ruling and governing the Church of GOD:—"Take heed to yourselves and to the flock over which the HOLY GHOST hath made you Bishops to rule[2] the Church of GOD"; and it is evident that from this governing power, the power of establishing laws, and consequently that of dispensing with them, cannot be separated.

In fact, in the provinces which each took under his charge, the Apostles, as supreme legislators of their respective flocks, made various Constitutions which still bear the name of Apostolical, such as the Lent Fast, the celebration of Easter and of the other Festivals of CHRIST on certain days, the rites and ceremonies of Baptism, and the other Sacraments. And S. Paul undoubtedly speaks of laws of this kind when he writes to the Corinthians, "The rest will I set in order when I come."[3] The same Apostle in his Epistles to SS. Timothy and Titus lays down laws relating to the irregularities of Bishops and Priests; and in his second Epistle to the Corinthians,[4] he declares that, as Vicar of CHRIST, he will remit a portion of the punishment inflicted upon the incestuous Corinthian, and through compassion, will admit him again into the bosom of the Church, from which, by excommunication, he had been cast out; which is a good example of the exercise of a dispensing power.

It is certain in the third place, that this power given by CHRIST to His Apostles, of governing the churches or dioceses which fell to each by lot, or which each by Divine Inspiration chose, was a power absolute and unlimited, extending to all

[1] Acts xx. 28.
[2] ποιμαίνειν. In the Vulgate, "*regere.*"
[3] 1 Cor. xi. 34.
[4] 2 Cor. ii. 10.

kinds of cases. This is evident from the form of words which CHRIST used in this mission of the Apostles, which in itself indicated a power without limit or restriction. "All power is given unto Me, go ye therefore and teach all nations." "As the FATHER hath sent Me, so send I you." And in truth men whom CHRIST sent into so many and remote provinces as His LEGATES *à latere* (as S. Paul says, "Now then we are Ambassadors for CHRIST,"[1]), men whom CHRIST Himself constituted Fathers of the New Church, Princes of the Christian people, and powerful gods of the Earth, as David calls them, "Instead of thy fathers thou shalt have children: the princes of the people are met together, the powerful gods of the earth are greatly elevated,"[2] these men, I say, must have been as the Plenipotentiaries of CHRIST, from whom nothing was reserved and upon whom no restriction was laid in the management of the Diocese with which each was charged. In confirmation of this we know that, in consequence of this power, each and all of the Apostles, in their several Provinces or Dioceses, themselves ordained many Bishops, and gave to them the power of ordaining others. Thus S. John acted in the Churches of Proconsular Asia, where, amongst others, he ordained S. Polycarp, Bishop of Smyrna, as is well known from Tertullian's book, *de Præscriptione Hereticorum*, cap. 32, and from S. Jerome, *de viris illustribus*, §. 17. S. Paul also, in Crete, acted in the same way, where he ordained S. Titus Archbishop of Gortyna, with power to erect new Bishoprics in the island; as we read in the Epistle to Titus.[3] If therefore the Apostles, in virtue of the power annexed by CHRIST Himself to the Episcopal Order, exercised in their Dioceses the sublime function of consecrating Bishops, which is the greatest of the Ecclesiastical Hierarchy, what cases could occur in their own or in any other Dioceses, which should not be subject to the rule and oversight of the same Apostles?

II. If we now inquire who they were who succeeded the Apostles in this power and jurisdiction, all the ancient Fathers agree that they were the Bishops. S. Firmilian of Cappadocia,

[1] 2 Cor. v. 20.

[2] Pro patribus tuis nati sunt tibi filii: Principes populorum congregati sunt. Dii fortes terræ vehementer elevati sunt. VULG.

[3] Titus i. 5.

in the 75th Epistle to S. Cyprian; S. Cyprian himself, in his Epistle to S. Cornelius, which is the 45th in Fell's edition; S. Pacianus of Barcelona,[1] Epistle 1; S. Jerome, in an Epistle to Evagrius[2] and in one to Marcella. Not to transcribe all, let us hear the passage from S. Firmilian, which is most elegant. After relating the form wherewith CHRIST, according to S. John, ordained the Apostles Bishops, he proceeds thus: "The power of remitting sins was therefore given to the Apostles, and to the Churches which they, being sent by CHRIST, founded, and to the Bishops, who, being ordained into their places, succeeded them."[3] And what S. Augustine says upon the 44th Psalm is not less remarkable. "Instead of the Apostles, Bishops were constituted. Think not, therefore, that thou art deserted"—(he is speaking of the Church)—"because thou seest not Peter, because thou seest not Paul, because thou seest not those through whom thou hast been born: thy ancestry hath grown up to thee from among thy offspring."[4] But why weary ourselves in demonstrating a truth which the Council of Trent, Session 23, Chapter 4, supposes to be notorious and beyond question?

From this I draw two most important conclusions. First, that the jurisdiction of Bishops is derived to them, not from the Pope, but immediately from CHRIST Himself, which is proved from this, that what our LORD said to S. Peter, viz., "Thou art Peter, &c.," and "Feed my sheep," &c., He also said to the other Apostles; viz: "As My Father hath sent Me, so send I you." "Go ye therefore and teach all nations," &c. Therefore as it may be drawn from the first texts, that the successor of S. Peter is by Divine right Primate of the Church, and hath received immediately from CHRIST the government and administration of the Universal Church, so from the other it must be concluded, that the successors of the Apostles are also by Divine

[1] About A.D. 355.

[2] Ep. 146, (al. 85,) p. 1083.

[3] Aug. T. iv. p. 398. No. 32. Potestas ergo remittendorum peccatorum Apostolis data est, et Ecclesiis quas illi a CHRISTO missi constituerunt, et Episcopis qui eis ordinatione vicaria successerunt.

[4] Pro Apostolis . . . constituti sunt Episcopi. Non ergo te putes desertam, quia non vides Petrum, quia non vides Paulum, quia non vides illos per quos nata es: de prole tuâ tibi crevit paternitas.

right the Pastors and Governors of their respective Dioceses, and receive immediately from CHRIST the power of governing and administering them. This is the doctrine held by the Sacred Faculty at Paris, from time immemorial, and indeed, for twelve centuries by the whole Catholic Church, till at last ignorance or a contempt for antiquity (as Bossuet observes,[1]) introduced the contrary doctrine into the schools, viz. that the jurisdiction of Bishops is derived immediately from the Pope; a doctrine, which, when we know that it was unheard of until the thirteenth century, we are sure of its falsehood; whilst the contrary is securely and plainly founded upon Holy Scripture and Tradition. For what else could our LORD mean us to understand when He said to His Apostles, "As the FATHER hath sent Me, so send I you," but that it is CHRIST Himself and not Peter, Who gives both to the Apostles themselves and to the Bishops, their successors, the jurisdiction and authority which is annexed to their character? What else would the Apostles themselves teach us, when in the Synod of Jerusalem they express themselves thus, "It seemed good to the HOLY GHOST and to us"[2]; except that all the force of the Episcopal decrees, made either in general or particular councils, is derived directly from CHRIST, and not from the Pope? What else did S. Paul mean, when he said to the Bishops of Asia, "The HOLY GHOST hath made you Bishops to feed the Church of GOD,"[3] but that the HOLY SPIRIT alone, and not the Vicar of CHRIST, is the Author of the power of Bishops? What else did the ancient Bishops signify, when they thus subscribed the synodical acts, "Ego judicans, Ego definiens subscripsi," but that, in matters relating to the Faith or to discipline, Bishops vote in Synod with the same authority with which S. James in that at Jerusalem said, "Wherefore my sentence is," &c.?[4] Lastly: what else did the Fathers in the Fifth Œcumenical Council understand, when not only in the absence, but even against the will of the Roman Pontiff, they condemned the three famous Nestorian Chapters; and the Fathers of the Eighth Œcumenical Council, when without waiting for the confirmation of the Apostolic See, they pronounced this sentence against Photius: "We have

[1] Bossuet, 5. book 4, cap. xi.
[2] Acts xv. 28.
[3] Acts xx. 28.
[4] Acts xv. 19.

repelled and anathematized him as disobedient and resisting this Holy and Œcumenical Synod, by the power given unto us, in the HOLY SPIRIT, from our first and great Pontiff, the Deliverer and Saviour of all men."[1] What else did they understand but that before the Papal confirmation, the decisions made by the Episcopal body have a Divine force derived immediately from CHRIST, the only Author of all the Sacraments and the Fountain of all Ecclesiastical jurisdiction?

III. The second conclusion is, that the power thus given by CHRIST to the Bishops, is of itself a power absolute and without limit, for the government of each Diocese. This appears from the same principles. For as CHRIST in saying to S. Peter "Thou art Peter," and again "Feed My sheep," constituted the successors of S. Peter, viz. the Roman Pontiffs, Pastors of the Universal Church, saving always the rights of the Bishops; so also when He said to the Apostles, "As My Father hath sent Me, so send I you," he constituted the successors of the Apostles, viz. the Bishops, Pastors of each particular Church, saving, in like manner, the Primacy of the Pope, which consists in nothing more than in the administration and oversight of the whole Catholic Church, in order that each Minister, according to his place in her Hierarchy, may do his duty and exercise his functions perfectly according to the rule laid down by the Divine Law, and the Canons established with the common consent and acceptation of the whole Church. For the Papal and Episcopal authorities are both of the same order, and belong to the same kind, differing only in this respect, that the Pope is to the whole Church what the Metropolitan is to his Province, saving always the rights of the suffragans. Thus S. Thomas, "The sacerdotal power is surpassed by the Episcopal power, as by a power of a different kind, but the Episcopal power is surpassed by the Papal, as by a power of the same kind. Hence, every Hierarchical act which the Pope is able to perform, a Bishop can perform likewise."[2] Which is the same with what Cardinal Cusa has more

[1] Nos eum inobedientem et resistentem Sanctæ huic et Universali Synodo repulimus et anathematizavimus, per datam nobis potestatem in SPIRITU SANCTO à primo et magno Pontifice nostro Liberatore ac Salvatore cunctorum.

[2] S. Thomas T. vii. p. 2, fol. 145. Ed. Rom. 1570. Potestas Sacerdotis excedituur à potestate Episcopi, quasi à potestate alterius generis; sed potestas Episcopi

briefly expressed in the second book, "de Concordantiâ Catholicâ,"[1] chap. 13; "The only peculiarity in S. Peter was that he was superior in administration." And again, in chap. 17, "The superiority of the Archbishop, Primate, and Pope consists in administration."[2]

IV. This truth is one of the most constant in the tradition of the ancient Fathers. All agree that what CHRIST said specially to S. Peter, "Feed My sheep," applies, by reason of his office, to each Bishop, and that CHRIST in directing His words to S. Peter only, did not intend thereby to constitute him sole Pastor, but to give us to understand that the Church being composed of as many flocks and Pastors as there are Dioceses and Bishops, union and subordination to Peter, as the head or centre of Catholic unity, should make them appear as one only Church. See upon this subject the authorities of S. Basil, ch. 22 of his Monastic Constitutions; S. Jerome, in the middle of the first book against Jovinian[3]; S. John Chrysostom, Homily 79 upon S. Matthew; S. Augustine, ch. 32 "*de Agone Christiano*," and Sermon 108, ch. 4, "*de Diversis*"; S. Cyril of Alexandria in the 13th book "*de Adoratione in Spiritu*"; Venerable Bede, in his Commentary on the 21st ch. of S. John, besides others, which Launoy has largely described in his letter to Hadrian Vaillant, which is the fifth of the second book; and Louis Dupin in his fourth Dissertation "*de Primatu Romani Pontificis*," chap. 1, sec. 1. I shall only insert here some passages from S. Cyprian, who, of all the Holy Fathers, was the one who has the most frequently and most forcibly depicted the great power annexed by CHRIST to the Episcopate.

V. In the 27th Epistle, "*ad lapsos*," Cyprian affirms it to be a Divine institution, made by CHRIST Himself, that the new Church which He had founded should be established and built upon the Bishops, and that of all the acts and functions of that

exceditur à potestate Papæ, quasi à potestate ejusdem generis. Unde omnem actum hierarchicum quem potest facere Papa, potest facere Episcopus.

[1] Cusa de Conc. Cath. ii., cap. 3 & 17. Hoc solum singularitas in Petro fuit, quod ipse fuit major in administratione.

[2] Superioritas in Archiepiscopo, Primate et Papâ, in administratione consistit.

[3] Lib. i. cap. 26.

Church, the Bishops should be the arbiters and absolute administrators. It has been established by Divine law, "that the Church should be built upon the Bishops, AND THAT EVERY ACT OF THE CHURCH SHOULD BE GOVERNED BY THE SAME RULERS."[1] Again, in his 72nd Epistle, to the Pope S. Stephen, he writes that each Bishop is supreme Prelate in his own Diocese, recognizing in the administration of the Sacraments and in the internal government of it, no other superior than CHRIST. "In which matter we neither use violence to any one nor lay down a law for any; since every head possesses the free exercise of his will in the administration of his Church, subject to the account which he must hereafter render of his deeds to the LORD."[2] In the oration with which the same Cyprian, in the beginning of the year 256, opened a Council of eighty-seven Bishops, the Holy Doctor speaks in terms even more expressive: for he plainly says that in matters relating to the government and administration of each Diocese, there is not in the Church of GOD, any one who can style himself Bishop of Bishops; but that each Bishop is the Supreme Pastor of his own flock, that his power extends to all cases, and that he is answerable to CHRIST alone. "It remains that each of us should declare his opinion upon the matter before us, neither judging any, nor seeking to remove from the right of communion those who think differently from us. For no one amongst us claims to be Bishop of Bishops, or compels his colleagues, by a tyrannical fear, to obey him. SINCE EVERY BISHOP POSSESSES ACCORDING TO THE FREE EXERCISE OF HIS OWN LIBERTY AND POWER, HIS PECULIAR PREROGATIVE: and can no more be judged by another than he can judge another. But let us wait for the judgment of our universal LORD JESUS CHRIST, who solely and alone, possesses the power both of appointing us to the government of His Church and of judging our actions."[3]

[1] Inde per temporum et successionum vices Episcoporum ordinatio et Ecclesiæ ratio decurrit, ut Ecclesia super Episcopos constituatur ET OMNIS ACTUS ECCLESIÆ PER EOSDEM PRÆPOSITOS GUBERNETUR. Cùm hoc itaque Divinâ lege fundatum sit. . . . .

[2] Qua in re nec nos vim cuiquam facimus aut legem damus: quando HABEAT IN ECCLESIÆ ADMINISTRATIONE VOLUNTATIS SUÆ ARBITRIUM LIBERUM UNUSQUISQUE PRÆPOSITUS, rationem actus sui DOMINO redditurus.

[3] Superest ut de hâc ipsâ re singuli quid sentiamus, proferamus, neminem judi-

VI. Lest any one should imagine that ill-will against Pope Stephen suggested to Cyprian the use of such strong expressions in favour of the power of Bishops, it may be noticed that the Epistle first referred to, was written in the year 250, *i. e.* four or five years before the commencement of the controversy about reiteration of Baptism. And further, that in many works written during the Pontificate of Cornelius, Stephen's predecessor, Cyprian had inculcated the same doctrine with as great clearness and positiveness as he did afterwards. Thus in Epistle 52, to Antonianus, written in 252, he says, "so long as the bond of concord is kept, and the indivisible sacrament of the Catholic Church persevered in, each Bishop disposes of and directs his own actions, answerable for the account of his government to the LORD."[1] Whence we infer that in the opinion of Cyprian, so long as a Bishop preserves the Catholic peace and unity, not departing from the discipline generally received, he is in every other respect the Supreme Prelate of his Diocese, amenable to GOD alone for his actions.

Again in Epistle 55, to Pope Cornelius, written also in the year 252, Cyprian affirms that after the accused parties, Fortunatus and Felicissimus, had been judged and condemned in the Provincial Synod, they had no right to hope that Cornelius should restore them, and that their appeal to Rome against the decision of the African Councils could not avail them, because the Bishops in Synod were supreme judges in the causes belonging to each province, inasmuch as they acknowledged GOD alone as their superior, and that reason required that causes should be discussed in the places in which the crimes alleged had been committed, and that to hold that the jurisdiction of Africa,

cantes aut à jure commûnionis aliquem, si diversum senserit, amoventes. Neque enim quisquam nostrum Episcopum se Episcoporum constituit aut tyrannico terrore ad obsequendi necessitatem collegas suas adigit: QUANDO HABEAT OMNIS EPISCOPUS PRO LICENTIA LIBERTATIS ET POTESTATIS SUÆ ARBITRIUM PROPRIUM: tamque judicari ab alio non possit, quam nec ipse potest judicare. Sed expectemus universi judicium DOMINI nostri JESU CHRISTI, Qui Unus et Solus habet potestatem et præponendi nos in Ecclesiæ Suæ gubernatione, et de actu nostro judicandi.

[1] Manente concordiæ vinculo et perseverante Catholicæ Ecclesiæ individuo Sacramento, actum suum disponit et dirigit unusquisque Episcopus, rationem præpositi sui DOMINO redditurus.

within the Province, was inferior to that of Rome, could be asserted only by lost and desperate men. "Since it hath been determined by all of us and is alike just and right, that each one's cause should be judged on the spot where the crime was committed, and a portion of the flock is given to each Pastor to rule and govern as he will answer to GOD hereafter, it behoves those over whom we rule not to carry their causes hither and thither, but to bring them for judgment, where they may have both accusers and witnesses of their fault, unless indeed the authority of the Bishops in Africa, who have already given their judgment upon the matter, seems to a few desperate and lost men to be insufficient."[1]

Lastly, in the book *de Unitate Ecclesiæ*, composed in the year 251, Cyprian has left us this important and memorable axiom.[2] "The Episcopate is one, of which a part is enjoyed by each Bishop, entire. The Episcopate is one alone, but so divided by CHRIST that each Bishop in his share enjoys *entire*, all the power that any other Bishop enjoys, and each would not enjoy the Episcopate *entire*, if the power of the latter were greater than the power of the former. The power therefore is in all equal, and in all the same." Cyprian had expressly said this same thing a little before in the same book.[3] "Therefore the other Apostles were what Peter was, enjoying the like fellowship of honour and power: but the beginning springs from unity, and the Primacy is given to Peter that the Church of CHRIST may be shown to be one," &c.[4]

That Cyprian is speaking not only of the power of order, but

[1] Cùm statutum sit omnibus nobis, et æquum sit pariter ac justum, ut uniuscujusque causa illic audiatur ubi est crimen admissum: et singulis pastoribus portio gregis adscripta, quam regat unusquisque et gubernet, rationem sui actus DOMINO redditurus: oportet utique eos quibus præsumus non novo circumcursare, sed agere illic causam suam ubi et accusatores habere et testes sui criminis possint, nisi si paucis desperatis et perditis minor videtur esse auctoritas Episcoporum in Africâ constitutorum, qui jam de illis judicaverunt.

[2] Episcopatus unus est, cujus à singulis in solidum pertinetur.—p. 195.

[3] And, be it remembered, which was actually written in behalf of S. Cornelius and the Roman Church against the claims of the schismatics, Novatus and Novatian. TRANSL.

[4] Hoc erant utique et cæteri Apostoli quod fuit Petrus, pari consortio prædíti et honoris et potestatis: sed exordium ab unitate proficiscitur, et primatus Petro datur ut una CHRISTI Ecclesia et Cathedra una monstretur.

also and principally of the power of jurisdiction, is apparent from the context, which relates to the words of CHRIST to S. Peter, viz. "Thou art Peter," &c., and "Feed My sheep," &c., as well as those which He spake to the rest of the Apostles: "As the FATHER hath sent Me so send I you: whosesoever sins ye remit they are remitted," &c. when, clearly, CHRIST is speaking of the power of jurisdiction and of its exercise. Therefore, in the Episcopate is contained all the spiritual power left by CHRIST in the Church: Therefore in each one of the Bishops is this power, absolute, supreme, and unlimited. Hence the same S. Cyprian, in Epistle 69 to Florentius, defining the Church, declares that it consists in the congregation of the people in union with its Bishops, so that it is the same thing to conceive a Christian people in union with their Bishop, as to conceive the Church. "The people in union with the Priest, the flock adhering to their Pastor; they are the Church: Whence you ought to learn that the Bishop is in the Church, and the Church in the Bishop."[1] Therefore, as all power must reside in the whole Church, it follows that the Bishop, who together with the people constitutes the Church, must possess all power, which is further confirmed by remarking that the same Apostle S. Peter, wishing to signify at once and by one word, the influence of CHRIST in the government of the Church, gave to Him the title of Bishop of our souls. "Ye are now returned unto the Shepherd and Bishop of your souls."[2] And it is besides confirmed by the custom of the primitive Church, which, as Theodoret observes upon the 1st Ep. to Timothy, ch. 3, called the Bishops Apostles, "They who are now called Bishops were named Apostles."[3] Again, the Holy Fathers and Councils delivered the same opinion concerning the Episcopate when they gave the Bishops the ample and magnificent title of Vicars of CHRIST: as for instance, they are styled by the Fathers of the Synod of Meaux, in 845, "All we are Vicars of CHRIST, albeit unworthy"; and again those of the Synod of Chiersi in 848, "Reverence the Pastors of the Churches

[1] Plebs Sacerdoti adunata, et Pastori suo Grex adhærens. Unde scire debes, Episcopum in Ecclesiâ esse, et Ecclesiam in Episcopo.

[2] 1. Pet. ii. 25.

[3] Theodoret. in 1 Tim. iii. § i.

as Fathers and Vicars of CHRIST,"[1] not to cite Pope S. Gregory VII., and the two Bishops of Chartres, S. Fulbert[2] and S. Ivo, with many others mentioned by Launoy in his 2nd Book, Ep. 2, Nos. 21, 22, 23, and 24.[3] All which serves to show the unreasonableness of Bellarmine, who endeavours to appropriate to the Roman Pontiff this title of Vicar of CHRIST, because he was so styled in the 2nd Council General of Lyons in France. For before Bingham, Baluze had noticed, and before Baluze, Rigault, that even in S. Cyprian's time, the Bishops were styled, and recognized as Vicars of CHRIST. "Observe that even in the time of Cyprian, Bishops were styled the Vicars of CHRIST," says Rigault,[4] on Ep. 55 of Cyprian to Cornelius (which is the 59th in the edition of Fell.) But as Baronius will have it that this passage in Cyprian is to be understood of the Pope, Bingham brings forward another from Ep. 63, to Cæcilius, where Cyprian speaks thus. "That Priest truly discharges the office of CHRIST who imitates that which CHRIST did."[5] He cites the Apostolic Constitutions (which all allow to have been known in the fourth century), Book ii. chap. 26. "The Bishop is, after GOD, god upon earth: let the Bishop so preside over you as partaking of the dignity of GOD."[6] He cites also the author of the book entitled "*Quæstiones Veteris et Novi Testamenti*," which is included in the works of S. Augustine,[7] chap. 127,

[1] Pastores Ecclesiarum ut Patres et CHRISTI Vicarios colite.

[2] Launoy, T. v. P. i. p. 278, &c. [S. Fulbertus, Bishop of Chartres in the beginning of the eleventh century. His writings, consisting of Epistles, Sermons, Canons, &c., are contained in the 2nd vol. of the Bibliotheca Patrum.—TRANSL.]

[3] Bingham Vol. i. p. 82. John de Launoy, D.D. of Paris, born in 1603, a man of a most laborious and studious mind, as the number of works which he left testifies. His letters were published at Cambray, in 1 vol. fol., in 1689. A collection of his works was printed at Geneva. TRANSL.

[4] Rigault, Nicholas, born at Paris in 1577. Although in the Roman Communion he had a leaning towards Calvinism, and held many strange views, especially concerning the sacerdotal powers of the laity. This is noticed by H. Dodwell and Bishop Fell. TRANSL.

[5] Ille Sacerdos vice CHRISTI verè fungitur qui id quod CHRISTUS fecit imitatur.

[6] Qui Episcopus est, hic post DEUM Deus terrenus. Episcopus vobis præsideat ut dignitate DEI cohonestatus.

[7] Cited, as a genuine work of S. Augustine, by the Fathers of the Council of Paris, A.D. 824: but more properly attributed by others to Hilary the Deacon, a Luciferian.

"GOD's Bishop must be more pure than other men, for he is His Vicar."[1] Moreover, he cites S. Basil, chap. 22, of the Monastic Constitutions, "The Bishop is nothing else than he who represents the person of CHRIST."[2] So that the title of *Vicar of* CHRIST, which Bellarmine will have to be the characteristic of the Pope, appears by these examples to be the common title assigned in the Church to all Bishops indifferently, and this moreover in the purest ages. Whence Louis Thomassin concludes, in his immortal work *De Beneficiis*, Part I. Book I., Cap. 50, No. 13, that the Roman Pontiff called himself alone *Vicar of* CHRIST by *autonomasia*, not because the other Bishops had been deprived of this title by any law, but because by the tacit consent of the Faithful it had insensibly become *proper* to, and the characteristic of, the Bishop of Rome, who, owing to his Primacy, in an especial manner performs throughout the Church the functions of CHRIST.[3]

VII. The same Thomassin remarks that on this subject, viz. the power and excellency of Bishops, no one has spoken more soundly or profoundly than the great Parisian Theologian Petrus Aurelius. "No one," he says, "hath more successfully penetrated the very inmost recesses of this doctrine."[4] It will be well therefore to lay before the reader in this place the noble discourse of that great man, whose works are but little, if at all, known in Portugal, although they deserve a distinguished place in the library of every Bishop.

"CHRIST instituted the Episcopal office not maimed or mutilated, but a full, entire and perfect office, the highest and most perfect image of His own highest and most perfect Priesthood. For the Bishop represents CHRIST and acts as His substitute on

[1] Antistitem DEI puriorem cæteris esse oportet, est enim Vicarius ejus. Appendix to Vol. 3, *Questiones de utroque mixtim*, ch. 127, near the end.

[2] "Nihil aliud Antistes, quam is qui personam CHRISTI sustinet." [So Pereira quotes as from Bingham, but more properly thus: "Nam præfectus nihil aliud est nisi is qui personam Servatoris sustinet, cum et DEI hominumque factus sit Mediator."] TRANSL. Ch. 22, § 4.

[3] Louis Thomassin, Priest of the Oratory, born at Aix in Provence, in 1619, published, besides many other valuable works, three volumes upon Ecclesiastical Discipline, relating to Benefices and their holders, which met with the approbation of Pope Innocent XI. TRANSL.

[4] See Appendix.

earth, as the Holy Fathers constantly affirm. As therefore the Priesthood of CHRIST contains the whole sacerdotal authority, and the full power of feeding the flock, so that the various powers included in that plenitude and fulness may be distinguished and discerned, but cannot be dissociated, or in any way separated without grievous sin: so the Episcopate, in its very nature, contains the plenitude of the Priesthood, and the fulness of the Pastoral office, and the office has been endowed with such dignity by CHRIST, that he who should endeavour to separate and sever the great power belonging to so high a dignity, would be as guilty as if he should disjoin the properties of CHRIST's Priesthood, and of His actual Divine Nature, and would obliterate the most excellent image of CHRIST on earth. For CHRIST received the fulness of the Priesthood from the FATHER when He was sent by Him, wherefore He gave the fulness of the same Priesthood, or both the powers of the Episcopate at the same time, to the Apostles when He sent them, as the FATHER had sent Him. Afterwards they handed down the same fulness of authority to the Bishops, sending them as they themselves had been sent by CHRIST: which same fulness the Bishops lastly transmitted to those that came after them, sending these as they had been sent by the Apostles."[1]

In this profound and elegant discourse is contained the whole

[1] Pet. Aurel. Vindiciæ Cens. Sorbon. Tom. ii. p. 87. CHRISTUS Episcopalem statum non mancum quippiam mutilumve instituit, sed plenum, integrum, perfectum, et Sacerdotii Sui summi et perfectissimi, summam et perfectissiman imaginem. CHRISTUM enim refert Episcopus et vicem Ejus in terris gerit, ut sæpe docent SS. Patres. Sicut ergo CHRISTI Sacerdotium vim omnem Sacerdotalem perfectamque pascendi gregis potestatem complectitur, ita ut varias in eâ plenitudine et perfectione conclusas potestates distinguere quidem discernereque liceat, dissociare verò et inter se quodammodo discindere, sit piaculum: sic Episcopatus plenitudinem Sacerdotii et Pastoralis muneris perfectionem naturâ suâ continet, et in hanc status dignitatem à CHRISTO conditus fuit, ut qui summas illas muneris tanti potestates separare ac dilacerare conetur, similiter faciat, ac si Sacerdotii CHRISTI divinæque Ipsius naturæ proprietates dirumpat et CHRISTI in terris præcellentissimam imaginem obliteret. CHRISTUS enim perfectionem Sacerdotii à PATRE accepit quando ab Illo missus est. Perfectionem deinde ejusdem Sacerdotii seu Episcopalem utramque potestatem simul dedit Apostolis, quando misit eos, sicut Ipse à PATRE missus fuerat. Eandem denique perfectionem ipsi tradiderunt Episcopis, mittentes eos sicut ipsi missi fuerunt à CHRISTO. Quam eandem deinceps Episcopi ad posteros transmiserunt, eos mittentes, sicut ipsos Apostoli miserant.

substance of the doctrine which Petrus Aurelius has left us, in this and other treatises, upon the unlimited and absolute power annexed by CHRIST to the Episcopal Order. In them, this learned Theologian opposes and annihilates all the speculations and sophistries with which the Jesuits, the unceasing enemies of the Bishops, endeavoured at that time, both in France and in England, to depress and destroy the authority and jurisdiction which, by Divine right, belongs to those Princes of the Church and successors of the Holy Apostles. He shows that although the power of Order and the power of Jurisdiction in Bishops may be in themselves *distinct*, it by no means follows from it that these powers can be, at will, *separated*. He shows that it is one thing for the Pope to have power to deprive a Bishop of his jurisdiction, and another for him to have power to deprive the Episcopate of Jurisdiction. He shows that by the institution of CHRIST, the power of jurisdiction was so closely connected with that of order, that in the understanding and acceptation of the primitive Church, a Bishop deprived of jurisdiction was actually regarded in the light of a layman. Lastly, he shows that Father Soares erred, and evinced his ignorance of the true doctrines of the Fathers and Councils, when he wrote that "*Bishop* is rather a name of *Order* than of *Jurisdiction*": whereas, on the contrary, the idea which CHRIST and the early Church have left us of the Episcopate is an idea directly and expressly comprehending *both* powers. And, indeed, the very name *Episcopus*, which implies superintendence and care, more expressly denotes Jurisdiction than Order. Hence, even in our present state of discipline, the Church never consecrates a Bishop without assigning subjects to him, at least *possible* subjects, as in the case of Titular Bishops, some of whom were named Bishops of Constantina, Lacedæmon, Martyria, and Tipassa, &c.

I have gleaned from various authors, that this name, Petrus Aurelius, was only a mask under which the celebrated Jean Verger,[1] of Hauranne, concealed his real name—a name most odious

[1] Jean du Verger du Hauranne, born in 1581, a famous Theologian: he corresponded with Jansenius, and read together with him the writings of the Fathers; he undertook the defence of the Roman Church against the Calvinists, but is especially celebrated for the work published under the name of *Petrus Aurelius*, in defence of the rights of the Hierarchy. The work was seized as

to the Court of Rome, on account of the strict friendship which this Theologian is said to have maintained with the well-known Cornelius Jansen, Bishop of Ypres; so odious that I remember to have read in the works of Pope Benedict XIV., that when the Canonization of S. Vincent de Paul[1] was under consideration, one of the Articles by which the Promoter of the Faith opposed it was by showing that Vincent de Paul had been the intimate friend of Verger. But whether or not Petrus Aurelius be the same with Jean Verger, it is certain that the works which go under his name, ever were, and still are, held in the highest esteem in France; nor am I aware that the Court of Rome has as yet censured them. Thomassin always cites them with marked approbation, and the Clergy of France, in the year 1646, ordered that they should all be magnificently printed in imperial folio, and two copies presented to each Bishop, and the rest distributed amongst the learned. At the beginning of the work were printed the Acts of the Assembly, containing expressions of honourable approbation and distinguished praise, such as never were bestowed upon any other book.

It was enough to cause the Jesuits to defame Petrus Aurelius, to remember that this Theologian, at the same time that he happily defended the sacred authority of the Bishops from their insolence and scurrility, brought to light and refuted with irresistible reasoning and universal applause the ignorance of one of their Company, the English Jesuit, John Floyd,[2] who under the name of Daniel de Jesus, published many and various virulent writings against all the Bishops of France and the Doctors of Paris. It was enough that Aurelius had declared, that, in the whole Society of Jesuits, there was not one Theologian to be compared with the celebrated John Gerson,

soon as it was published by the King's order, and all the copies suppressed. Le Maitre, Arnauld, and others, were his disciples.—TRANSL.

[1] S. Vincent de Paul, born of poor parents in 1576, was carried into Barbary by corsairs, returned to France and took Holy Orders: he instituted in 1626, the "Congrégation de la Mission," and subsequently the order of "Sœurs de la Charité": he died, after a life spent in good works, in the odour of sanctity, in 1660, aged 85, and was canonized in the year 1729.—TRANSL.

[2] John Floyd of Cambridge, a Jesuit, died in 1649. He left many works in Latin and English; amongst the former an Apology for the Holy See, under the name of Daniel de Jesus, which was printed at Rouen in 1631.—TRANSL.

Chancellor of Paris, either in learning or in fame throughout the Catholic Church, or in the good which he had done both to the Church and to the Apostolic See. "Henceforward, then, lay aside that Jesuitical spirit of rivalry against Gerson, with WHOM YOUR WHOLE SOCIETY HAS NOT A MAN TO COMPARE, not only in doctrine and great fame throughout the Catholic Church, but also in his great and remarkable merits in respect of that same Church and the Apostolical See, with which you vainly endeavoured to embroil him."[1] But it is time that I should proceed to demonstrate by examples taken from antiquity what has hitherto been proved only by the authority of the Fathers and Theologians.

VIII. In order then at once to perceive this supreme power of the Bishops, it were sufficient to advert to the sole authority with which for more than eight centuries they ruled their Dioceses, with the exception of those causes which the law calls "*Majores*," and which before the Compilation made in the thirteenth century, by Gregory IX.,[2] were rare, and before the introduction, in the time of Charlemagne, of the spurious Decretals of Isidorus Mercator, were *extremely* rare; with the exception of those causes, (concerning which, John Gerbais,[3] Doctor of the Sorbonne, composed, at the end of the last century, a learned treatise entitled "*De Causis Majoribus*," printed by order of the French Clergy, at Paris, in the year 1679,) the Bishops were they who, without any interference or influence on the part of the Apostolic See, governed, administered, disposed of, and decided, with full power, all the causes and affairs of their people, as their supreme and absolute Pastors. By the fourth and sixth Canons of Nicæa, by the

[1] Depone igitur in posterum æmulationem istam Jesuiticam in Gersonem CUI TOTA TUA SOCIETAS NON HABET QUEM CONFERAT, non solum doctrinâ famâque per Ecclesiam Catholicam maximâ, sed etiam meritis in eandem illam Ecclesiam et in ipsam Sedem Apostolicam, cum qua eum frustra committere conaris, eximiis et gravissimis.

[2] "*Decretalium Gregorii IX. Papæ Compilatio*," arranged from the five existing collections of Decretals by Gregory, with the aid of S. Raymond of Peñaforte, about the year 1230. Although styled a compilation of the *Decretals*, it is taken not only from the Constitutions of the Roman Pontiffs, but also from Holy Scripture, the Apostolical Canons, the Canons of Councils, and the Fathers. —TRANSL.

[3] John Gerbais, Doctor of Theology of Paris, and a Member of the Sorbonne; he died in 1699.—TRANSL.

nineteenth of Antioch, by the twelfth of Laodicea, and by the Canons of many other Synods, both of the East and of the West, the right of confirming their Suffragan Bishops belonged to the Metropolitans, and without any other Bulls than those of their Archbishop, they were enthroned and consecrated. And even by the new Law, introduced by the Decretals of Gregory IX., the Metropolitans preserved this prerogative, as may be gathered from the chapter *"Innotuit,"* 20, *"de Electione,"*[1] and from the chapter *"Cum Dilectus,"* 32,[2] of the same title. And with the rest of the Canonists, the great Peter de Marca,[3] book 6, cap. iii., no. 12, and Van Espen,[4] Tit. xiv., declare this. Hence John Eckius,[5] the great Theologian and antagonist of Luther in Germany, in the beginning of the sixteenth century, in the third Book *"de Primatu Petri,"* chap. 40, expresses his wonder that the Bishops, forgetful of what their common right permits them, should ask for the Pope's confirmation in order to be consecrated. The fact is that both the election and confirmation of the Bishops were reserved to the Apostolic See, by the modern Decretals and new rules of Chancery.[6]

IX. The Bishops thus confirmed by the Metropolitans had it in their power to introduce into their Churches whatever Symbol of Faith appeared best to them, provided it was not at variance with the Catholic dogmas; hence it followed that one was called the Symbol of Rome, another of Aquileia, another of Jerusalem, another of Neocæsarea, another of Alexandria, and others were named after other Dioceses. When Theodore, Bishop of Mopsuestia, in Cilicia, composed and introduced in the beginning of the fifth century, a Symbol repugnant to the Catholic Faith, the Holy Œcumenical Council of Ephesus reproved and con-

[1] Fol. 122.

[2] Fol. 150.

[3] *Pierre de Marca*, born in 1594, made President of the Parliament of Pau in 1621, and subsequently Archbishop of Toulouse and Minister of State: he was lastly raised to the dignity of Archbishop of Paris, and died almost immediately afterwards. He was a strenuous defender of the liberties of the Gallican Church, for which he incurred the displeasure of Pope Urban VIII.—TRANSL.

[4] *Zéger Bernard d'Espen*, the celebrated Canonist, was born at Louvain, in 1646.—TRANSL.

[5] *Eckius*, or *Echius* (John), Doctor in Theology, and Professor of the University of Ingolstadt, was born in 1486.—TRANSL.

[6] See note in § xvi.

demned him. Bingham, in the fourth volume of his *Origines Ecclesiasticæ*, Book x., cap. iv., and James Usher, in his dissertation "*de Symbolis*," appended to his Chronology, treat minutely of this subject.

When any heresy or suspected doctrine arose, it was the Bishops who in Synod condemned it, obliging the authors of it to retract and abjure their error. Thus the Bishops of Egypt acted towards Sabellius and Arius, the Bishops of Thrace towards Eutyches and Severus, the Bishops of Africa towards Pelagius, and the Bishops of Spain towards Priscillianus. And Petrus Aurelius observes with reason, in his learned Apology for the Pastoral Letter of the Bishops of France against certain books of the Jesuits, (and Thomassin also, citing Aurelius, in his dissertation upon the Council of Cangra, No. 26,) that no one in those early ages dared to deny or elude the force of these Episcopal Judgments merely upon the pretext that they were not infallible, but that even heretics always recognized in these Judgments an irresistible power, so that in order to escape from it, they only made use of some subterfuge or imposture, declaring themselves to have been *falsely accused* of the errors charged against them, and that their real opinions were altogether different from those imputed to them by the Synods. For where no such plea existed, all recognized the sentence of the Bishops as legitimate and decisive, all obeyed it, and all anathematized the writings or persons whom they anathematized.

Not only were the Clergy subject to their Bishops, but all the Monks within their respective Dioceses: so that without the previous licence and approval of the Bishop, no one could exercise any ecclesiastical or hierarchical function, whether it were preaching, or the administration of the Sacraments. For this it is enough to cite the fourth Canon of Chalcedon, or the Epistle of S. Jerome to Pammachius against the errors of John, Archbishop of Jerusalem.

That the administration of the property of the Church was in the first ages entirely dependent upon the Bishop, appears from Canon 26 of Chalcedon, Canons 7 and 8 of Gangra, 24 and 25 of Antioch, and 41 of the Apostolical Constitutions.[1]

[1] .... Any Church having a Bishop shall also have a Steward out of its own

X. There was not at that time, nor for some time after, any reservation of excommunications or sins. The Bishops possessed the power of absolving *all*, as likewise did they whom the Bishops constituted their Penitentiaries, and from the exercise of this power not even cases of public heresy were excepted, nor of those who had relapsed into idolatry in times of persecution. As to heresy, it appears from the eighth Canon of Nicæa[1]; the seventh and eighth of Laodicea; the seventh of Constantinople; the sixtieth of Agde; the twenty-eighth of Epaone; the eighth of the Fourth Council of Orleans; the thirty-sixth of S. Martin of Braga; the fiftieth of Ferrandus of Carthage[2]; and from the Epistle of S. Athanasius to Rufinianus. In the case of idolatry, it appears from the fifteenth Epistle of S. Cyprian (to the Martyrs and Confessors); from the sixteenth Epistle (to the Presbyters and Deacons); from the second Canon of Ancyra; from many of the Canons of Elvira; and from the tenth of the Second Council of Arles.

The Fathers of the Provincial Council of Salegunstadt, in Germany, held in the year 1022, declare in the eighteenth chapter,[3] to their people, that all absolutions received from Rome, without the previous consent and licence of their Bishop, were invalid and unlawful. The same thing was declared in the Council of Limoges in France, A.D. 1034, Session the second,[4] which evidently proves that it was in the ordinary power of the Bishops to give or to withhold absolution in any case whatever.

Clergy, who may manage the affairs of the Church *with the sanction of his own Bishop*.—26 Canon of Chalcedon.

"If any one takes of the fruits offered to the Church, &c., *contrary to the will of the Bishop*, &c., let him be anathema."—Can. 7, Gangra.

"If any one gives or receives the fruits besides the Bishop.... let him be," &c. —Can. 8, Gangra.

"The Bishop ought to have power over the possessions of the Church," &c.— 25 Can. Antioch.

"We ordain that the Bishop have authority over the goods of the Church," &c., &c.—41 Can. Apost.

[1] "Concerning those of the Cathari who have come over to the Holy Catholic Church, the Holy Synod has decreed that they having received imposition of hands shall remain in the Clergy," &c.—8 Can. Nicæa.

[2] Fulgentius Ferrandus, Deacon of the Church of Carthage, lived about the middle of the sixth century: he published a work entitled "*Breviatio Canonum*," divided into 252 chapters.—TRANSL.

[3] Labbe, tom. ix. p. 847. [4] Ditto, tom. ix. p. 908.

Matthew Paris,[1] who lived in the thirteenth century, or, according to Wilkins in his collections of English Councils, in the twelfth century, declares that it was ordered in the Council of London, A. D. 1141,[2] that the power of absolving persons guilty of laying violent hands upon Clerks, should be reserved to the Pope,—a proof that up to that period the English Bishops had absolved in the particular case so reserved.

The fortieth and fiftieth Canons of Africa, (in the collection of Ferrandus,) and the twelfth of Nicæa, recognizing this pre-eminence in the Episcopal order, ordain that it is the Bishop's province to designate the duration of public penances, and the period at which penitents should be absolved. And by the ninth Canon of Antioch, the Bishop was made the despotic administrator of his Diocese, to rule and govern the people committed to him, as he thought best.

XI. Finally, whoever reads Peter de Marca "*de Concordia Sacerdotii et Imperii,*" Book vi., cap. iii., iv., viii, and ix.; Thomassin "*de Beneficiis,*" Part 2, Book ii.; Gerbais, in the tract already referred to, "*de Causis Majoribus,*" art. i.; and Gibert "*de Prælatis,*" tom. ii., tit. 7, will find it fully proved from old historical monuments and Councils, that the ancient elections and confirmations of Bishops, the erections of new Bishoprics, the nomination of coadjutors and future successors of Bishops, their resignations, depositions, and translations, were all matters which, albeit most serious and important, were for many ages lawfully managed in the Church, without any dependence upon the Roman Pontiff; all these functions appertaining to Hierarchical discipline, being administered and ruled within their own Provinces by the Metropolitans, with or without the aid of the Synod. And this custom has no doubt existed from the time of the Apostles, confirmed by the sixth Canon of Nicæa and the second of Constantinople, in which it is ordered that, in conformity with the custom generally received in the Church, the Bishops of Alexandria shall govern and administer despotically in Egypt; the Bishops of the East, in the East; those of Asia, in Asia; those of Pontus, in Pontus; and those of Thrace, in Thrace;—and that they shall govern in

[1] M. Paris, p. 79. [2] Labbe, tom. ix. p. 1033.

such a manner that what the Bishop is with respect to each Diocese, the Metropolitan with his Suffragans shall be, with respect to the whole Province.[1] From which we infer that although this designation and distribution of Churches and Dioceses was made with the consent and approbation of the Pope, it was not *he alone* who gave force and strength to this division, which, without any doubt, originated in the division of Dioceses made by S. Peter and the other Apostles, and in which the whole body of Bishops afterwards successively coincided; which [*body*], as it gave their chief force to the Canons, by virtue of its consent, so also *it* alone had the power to rescind or alter them, and not the Pope alone of his mere will. Further, the Council of Chalcedon, in the twenty-eighth Canon, declared that some of the Papal prerogatives were held only by the consent and agreement of the Church: "The Fathers justly assigned privileges to the Throne of ancient Rome, because that city was the seat of empire";[2] which is the same thing that Pope Zosimus I. had confessed long before: "The decrees of the Fathers have enjoined peculiar reverence towards the Apostolic See in honour of the Blessed Peter."[3]

XII. In fact, if the division and designation of Dioceses be, by Divine right, reserved to the Pope, or if such division and designation depends upon him, why do the Fathers of Nicæa when treating in the sixth Canon of the limits and administration of the Dioceses of Egypt, the East, and the rest of Christendom, instead of recurring for their establishment to Divine right, or to the authority of the Roman Pontiff, allege the *custom* introduced? "Let the ancient *custom* be preserved throughout Egypt, &c. . . . . and in like manner at Antioch and the other Provinces, let each Church retain its privileges."

[1] The meaning seems to be [from the wording of the Canon] that the Metropolitan and his Suffragans, in Synod, are in respect to the *Province* what the *Bishop* is in respect to his *Diocese*. "*Primaz*" is evidently a misprint: Pereira must have written "*Bispo*."—TRANSL.

[2] Throno antiquæ Romæ, quod urbs illa imperaret, jure Patres privilegia tribuerunt.

[3] Apostolicæ Sedi in honorem Beatissimi Petri, Patrum decreta peculiarem quandam sanxere reverentiam.

Why did the Fathers of the Council of Constantinople, when by Canon 2 they renewed the observance of this same division of territories, allege nothing else in favour of it but the Canons of the Church? "*As the Canons direct,* let the Bishop of Alexandria rule only the affairs of Egypt, and let the Oriental Bishops only take charge of those of the East," &c. If the division and designation of Ecclesiastical Provinces depended on the Pope alone, or if this designation was a prerogative inseparable from the *Primacy,* with what conscience did the 150 Fathers of that same Council of Constantinople in the second Canon (according to the numbers of Dionysius Exiguus,) ordain that the Bishop of that city should hold the second place after him of Rome? "Let the Bishop of Constantinople hold the primacy of honour next after the Bishop of Rome." Or with what conscience did the Legates of Pope S. Leo, in the Council of Chalcedon, Session I., complain that Dioscorus in the Pseudo-Council of Ephesus had caused S. Flavianus of Constantinople to be degraded to the fifth place, because, according to the Canon just referred to, the first properly belonged to him? The authors of this Canon, it must be borne in mind, were many holy Bishops and as celebrated for learning as for sanctity. With what conscience could the Archbishops of Constantinople, (and amongst them the great Chrysostom and his successor Atticus, both most holy persons,) begin from that time forward to arrogate to themselves the administration not only of the Diocese of Thrace (in which they had been until that time mere Suffragans of the Archbishop of Heraclea), but of Asia and Pontus, both of which had hitherto preserved the same independence as the Dioceses of Egypt, of the East, and of Rome, had preserved and continued to preserve? Lastly, with what conscience did the Fathers of Chalcedon, by Canon 28, confirm this pre-eminence or Primacy of the Archbishop of Constantinople, declaring him to be Patriarch or Exarch of the two immense Dioceses of Asia and Pontus, in spite of the opposition made by the Legates of Pope S. Leo? And all know that notwithstanding the opposition made by the Apostolical See to this twenty-eighth Canon of Chalcedon, the Archbishops of that metropolis of the Eastern Empire always

preserved the power which the Council had given to them, and amongst them were S. Euphemius, S. Macedonius, S. Mennas, S. Eutychius, S. Ignatius, and many other holy Patriarchs. It is, then, undeniable that in this and other matters of discipline, the power of the whole body is, in the judgment of the Church and of the Bishops, greater than that of the head:—that is, that it is not so much the Supreme Pontiff as the *consent of the Churches* which gives force to the discipline and economy of Dioceses; and that it is also from *this consent*, that the division and distribution of Dioceses originated in the commencement of Christianity, and without as it seems the single concurrence, or the necessity of any such concurrence, of the authority of S. Peter. We know that S. Paul of his own authority constituted Timothy Bishop of Ephesus, and Titus of Crete, and the other Apostles acted in a like manner in other regions. In addition to which, we know with certainty, that in the first ages, new Provinces and Bishoprics were erected without any concurring influence of the Roman Pontiff, and that even Suffragan Bishops, without any other licence than that of their Metropolitans, divided their Bishoprics, constituting new Bishops in them, and marking out territories for them.

XIII. None of the learned in these days are ignorant that the false Decretals of Isidore Mercator introduced in the ninth century, by the efforts of Pope Nicholas I., were the beginning of the decay of the primitive discipline and of the perversion of the whole Hierarchical Order in the Church, to the great prejudice of the rights of the Episcopacy and extreme injury of the authority of the Provincial Synods: as John Gerbais in his dissertation "*de Causis Majoribus*,"[1] Article ix., Sect. 2; and Stephen Baluze in the preface to his notes on the Dialogues of Antonius Augustinus have well shown. The serious disputes and dissensions which arose in the time of the Emperor Charles the Bald, between the Apostolic See and the French Bishops, on account of the depositions of Rothadus, Bishop of Soissons, and Hincmar of Laon, had their origin in these false Decretals, Pope Nicholas I., and his successor Hadrian II., endeavouring

[1] Gerbais, p. 224. Baluze, p. 613.

to the prejudice of the two Provincial Councils of Douzi and Soissons, to set aside the sentences of deposition respectively given in them. And from these same Decretals arose in a great measure, the "Dictates"[1] of S. Gregory VII., of which Baronius speaks in his history, A.D. 1076., xxxi., certain privileges of the Roman Pontiff which, as so many Divine Rights, that Pope left to us in writing. It is enough to read through some of them to see that they are as false as Fleury and Van Espen, after Gerbais and Bossuet, have declared. From these Decretals also were chiefly formed the Collections of Burchard,[2] Bishop of Worms, and of Ivo of Chartres, in the eleventh century, and in the twelfth that of Gratianus, commonly called *Decretum*. A collection which although made with no higher authority than that of a simple Benedictine monk, however learned, full of false Decretals and of Councils that were never held, full of authorities which were but ill understood,[3]—this collection, I say, although so defective, (as the great Antonius Augustinus, Archbishop of Tarragona, after the Roman Correctors, has shown in his Dialogues "*de Emendatione Gratiani,*") was, owing to the ignorance of the times and the sanction given to it by the University of Bologna, raised gradually to such a pitch of estimation, that for 500 years the Canonists drew from this "*Decretum*" as from a Body of Public Law, or an authentic Repository of the Canons of the Church, almost every citation from the Councils and Fathers to be found in their writings.

[1] Bar. tom. xvii., p. 430.

[2] A Collection of Canons, &c., was made about the year 1008, by Burchardus, originally a monk, afterwards Bishop of Worms, assisted by his Abbat Osbertus, or Albertus; it consists of twenty Books, and is deservedly blamed by Antonius Augustinus for its inaccuracies and falsehoods. Ivo, Bishop of Chartres, compiled a "*Decretum,*" or body of Canons, &c., about the end of the eleventh or the beginning of the twelfth century, which appears to have been chiefly compiled from the work of Burchardus. Another work is also attributed to Ivo, as containing all the rules of life, and of Ecclesiastical Discipline; it is divided into eight Books, and is supposed to have been much used by Gratian in his compilation.—TRANSL.

[3] As for example, the 8th chap. of the 2nd Book of S. Augustine "*de Doctrina Christiana*"; from which, contrary to the intention of the holy Doctor, Gratian endeavours to prove that the Decretals of the Popes have the same authority as the Canonical Scriptures.—ANTONIO PEREIRA.

XIV. From this "*Decretum*" arose the chapter "*Nunc autem,*" and from it, the celebrated axiom "The Supreme See shall not be judged by any,"[1] which, as taken from the pretended Council of Sinuessa, becomes in the mouths of the Canonists a dogmatical definition; hence also, arose the gloss in the Decretals of Gregory IX. "In these matters, whatsoever the Pope wills, his will to him stands in the place of a reason, nor is there any one who can say to him, Why doest thou thus?"[2] Book i. Tit. vii. Cap. 3.

Moreover from this "*Decretum*" proceeded the chapter "*Synodum,*" and the chapter "*Regula vestra,*" taken from the false Decretals of Marcellus I., and Julius I., from which Gratianus infers that the constitutions of Bishops cannot have the force of laws without the confirmation of the Apostolic See: "The Synods of Bishops, as appears from what has preceded are powerless to define and enact."[3] And on this same doctrine, contrary to all Ecclesiastical antiquity and to the Council of Trent itself, the Congregation of Cardinals, Interpreters of the Council, drew up the following resolution in the year 1594. "Decrees made in Provincial Synods may not be published without the consent of the Roman Pontiff."[4] See also Peter de Marca, Book vi. "*de Concordia,*" Chap. xiv. No. 14.

Hence, again, proceeded the Chapter "*Qui se scit,*" which is the most ancient document in which the other celebrated principle of the Papal Chair, viz.: "The Pope alone possesses the plenitude of power: but others are called by him to participate in his care."[5] From which Fagnanus[6] endeavours to infer that the Pope alone holds his power of jurisdiction immediately

[1] Decret. Grat. Part 1. Dist. xxi. fol. 93.—Prima sedes non judicabitur à quoquam.

[2] Dec. Greg. ix. p. 203.—In his quæ vult Papa, ei est pro ratione voluntas. Nec est qui ei dicat, 'Cur ita facis?' Gloss on the words, *Veri Dei vicem.*

[3] Dec. Grat. Part i. Dist. xvii. cap. 1. & 2, folio 64.—Episcoporum concilia, ut ex præmissis apparet, sunt invalida ad definiendum et constituendum.

[4] Decreta quæ in consiliis Provincialibus conduntur, publicari non debent inconsulto Romano Pontifice.

[5] Dec. Grat. Part ii. Causa ii. cap. 12. fol. 653.—Solus Papa habet plenitudinem potestatis: ceteri verò ab eo vocati sunt in partem sollicitudinis.

[6] Fagnanus, cap. "*Perniciosa.*"—[Prosper Fagnanus, Professor of Canon

from CHRIST, and that the other Bishops receive it only from the Pope; and others, that the Pope is the "Bishop of Bishops," and "Ordinary of Ordinaries," able to exercise his Episcopal functions in every place, as possessing the whole Church for his Diocese. Now it is to be observed that the expression referred to is taken from an Epistle of Pope Vigilius written, not to Eleutherius (as the Roman correctors of the *Decretum* have amended it,) but to Profuturus, Archbishop of Braga, A.D., 538, (according to Baluze[1]) a period in which the purest discipline still flourished. But the same Baluze who published this letter in his Collection of Councils, warns us in his notes that the whole of the passage from which Gratianus compiled the Chapter "*Qui se scit*" is wanting in the three oldest of the MSS. which he had seen, viz., two in the library of M. Colbert, and one in the cathedral of Lyons in France. From which Gibert,[2] following Baluze, not unreasonably conjectures that this passage is one of the additions which Isidore Mercator wished to pass for an authentic Act of the ancient Pontiffs, and which he took from a letter of Pope S. Leo the Great, written to Anastasius, Archbishop of Thessalonica, in which the saint, addressing him as his Vicar in Illyricum, speaks thus: "We have in such manner entrusted the execution of our office to your charity, as that you are called to a share in our solicitude, not to the plenitude of our power.[3]" The fact is that Isidore, from various pieces which he picked out here and there, formed the 80th and many other Decretals which are now regarded by all parties as apocryphal and spurious. It is then very probable (taking into consideration the manifest impositions of Isidore, and also the silence of the three manuscript copies alluded to,) that he applied what he read in the letter of S. Leo, speaking as the *Patriarch of certain Provinces*, to one who was his Vicar or Delegate, to the letter of Vigilius *speaking as Pope to all the Bishops*, from which it resulted that Innocent III. and

Law in the University of Rome. In 1660 he published Commentaries upon the Decretals].—TRANSL.

[1] Baluze. Coll. p. 1468.

[2] Gibert, I. i. p. 262.

[3] S. Leo Mag. vol. ii. Ep. 12. chap. i. p. 51.—Vices nostras ita tuæ credidimus caritati, ut in partem sis vocatus sollicitudinis, non in plenitudinem potestatis.

other Popes made use of that formulary as a formulary of the primitive Church. Lastly, (to say no more upon a subject now current in the most celebrated writers, and familiar to every one,) from this "*Decretum*"[1] proceeded the chapter "*Alius*," taken from the Epistles of Gregory VII., from which all the old Canonists prove the authority claimed by the Pope over the temporalities of kings and princes. And Sixtus V. was so persuaded that he was Lord of all the states in Christendom, that (if we may credit Antoine Arnauld,[2]) he directed that Bellarmine's work "*de Romano Pontifice*," should be put upon the prohibited list, because he denied in it the *direct* power, and only granted the Pope the *indirect*.

XV. As notwithstanding the appearance of so many copies of false Decretals and spurious writings during the ninth and twelfth centuries, the Acts and Canons of the ancient Councils, and many works by the holy Fathers still existed entire, many learned and zealous men did not fail to notice at the time, the newly introduced corruption of discipline, and to lament bitterly the decay and contempt of the Episcopal rights. I may mention the two Bishops of Chartres, S. Ivo in his 110th Epistle to Pope Pascal II.; and John of Salisbury[3] in his Policraticon, Book vii. Ch. 21; Arnoldus, Bishop of Lisieux, in his 71st Epistle (to Pope Alexander III.); Hildebert, Bishop of Mans,[4] and afterwards Archbishop of Tours, in Epistle 47, to another Supreme Pontiff; Robert, Bishop of Lincoln, in his reply to Pope Innocent IV., which Matthew Paris describes in his history of the year 1252. In the place of all these let us listen to S. Bernard, Abbat of Clairvaux, addressing Pope Eugenius III. "I declare the murmurs and complaint of the Churches. They exclaim that they are maimed and dismembered. There

[1] Dec. Grat. Part ii. Causa xv. Quæs. vi. cap. 3. fol. 1065.

[2] Arnauld. Eclairciss. sur l'autorité des Conc. Gen. ch. iv. p. 52.

[3] *John of Salisbury*, an Englishman, Bishop of Chartres, and a friend of S. Thomas of Canterbury, died about 1180.—TRANSL.

[4] Hildeberti Op. p. 155.—in an Epistle to the Pope, written about 1131. "Pro obedientiâ vestrâ adversariis meis factus sum totâ die in derisum et insultatione eorum ita confundor, tanquam qui omnino amiserim disponendi de commissâ mihi Ecclesiâ facultatem. . . . . vestram itaque Paternitatem lacrymis exoro . . . . . nunc præcipere ut disponendi canonicè de Capellariâ meâ integram habeam potestatem."

are none, or but few, Churches which do not either mourn over or dread, that stroke. Do you ask *what* stroke? The Abbats are withdrawn from their Bishops, the Bishops from their Archbishops, the Archbishops from their Patriarchs or Primates. Is this a good aspect of affairs? It is a strange thing if it can even be excused. By frequently acting thus you prove that you possess the plenitude of *power*, but not so perchance the plenitude of right. You have been stationed to preserve to all persons the rank and order of their honours and dignities, and not to envy them these."[1] And again, "In short do you now believe that it is lawful to mutilate the Church in her members, to turn order into confusion, to disturb the boundaries which your Fathers laid down? If justice consists in preserving to every man his rights, how can it possibly become a just man, to take away those rights from any one? You err if you imagine that as it is the *supreme*, so yours is the *only* Apostolical Power instituted by GOD. If you imagine this, you dissent from him who declared 'there is no power but of GOD.' Lastly, the same Apostle says, 'let every soul be subject to the higher powers': he does not say '*sublimiori*,' as if speaking of *one*, but '*sublimioribus*' as of *many*. Hence your power is not alone of GOD, there are also intermediate, and there are inferior powers."[2] And presently, "You make a monster, if you take a finger from the hand and cause it to hang from the head, superior to the hand,

[1] S. Bernardus de Consideratione, Lib. iii. cap. 4. Tom. iv. p. 12.—Murmur loquor et querimoniam Ecclesiarum. Truncari se clamitant ac demembrari. Vel nullæ Ecclesiæ vel paucæ admodum sunt, quæ plagam istam aut non doleant aut non timeant. Quæris quam? Subtrahuntur Abbates Episcopis, Episcopi Archiepiscopis, Archiepiscopi Patriarchis sive Primatibus. Bonane species hæc? Mirum si excusari queat vel opus. Sic factitando probatis vos habere plenitudinem potestatis, sed justitiæ forte non ita. Honorum ac dignitatum gradus et ordines quibusque servare positi estis, non invidere.

[2] S. Bernardus de Consideratione, Lib. iii. cap. 4. Tom. iv. p. 13.—Tunc denique licitum censeas suis Ecclesiam mutilare membris, confundere ordinem, perturbare terminos quos posuere Patres tui? Si justitia est jus cuique servare suum, auferre cuique propria justo quomodo poterit convenire? Erras si, ut summam, ita et solam institutam a DEO vestram Apostolicam potestatem existimas. Si hoc sentis, dissentis ab eo qui ait 'non est potestas nisi a DEO.' Denique idem ait, omnis anima potestatibus sublimioribus subdita sit.' Non ait sublimiori tanquam in uno, sed sublimioribus tamquam in multis. Non ergo tua sola potestas a DOMINO; sunt et mediocres, sunt et inferiores.

collateral with the arm: just so is it if you dispose of the members of CHRIST's Body, otherwise than the LORD Himself appointed."[1]

He who spoke thus gave us clearly to understand that in his opinion the jurisdiction of Bishops is derived from CHRIST as immediately as that of the Pope: and that the Pope has not received the plenitude of power, that he might dispossess the Bishops of the rights and functions proper to their character, but rather that he might preserve such rights to them, under penalty of making restitution if he should injure them. Because, as Cardinal Cusa said afterwards in the Second Book of his Work, "*de Concordantia Catholica,*" chapter xiii., "The Pope has no power given to him by the Canons, by which he can infringe the jurisdiction of other Bishops. Nor do we read that the ancient Pontiffs intermeddled in their affairs."[2]

XVI. Nearly a hundred years after the appearance of the *Decretum* of Gratianus, Pope Gregory IX. published his new collection of Decretals in five books. The greater part of them was taken from the Letters and Rescripts of Innocent III., a very learned Pontiff, but particularly intent upon discovering and arrogating to himself new privileges, as belonging by Divine right to the Apostolic See, and consequently inseparable from it, whence Matthew Paris calls him "*audacem jurisperitum.*" Amongst such claims are those which Innocent speaks of in the chapter "*Inter Corporalia, de Translatione Episcopi,*" where he openly maintains that the translations, resignations and depositions of Bishops are by Divine right reserved to the Roman Pontiff alone. "These three are reserved to the Roman Pontiff alone—not so much by *Canonical* institution as by Divine institution." A doctrine which the illustrious Marca, and with him Gerbais, calls "unheard of, and alien from the practice of ten centuries."[3]

These Reserves greatly increased with the publication of the

[1] Monstrum facis, si manu submovens digitum, facis pendere de capite: superiorem manui, brachio collateralem. Tale est si in CHRISTI Corpore membra aliter locas quam disposuit ipse DOMINUS.

[2] Cusa, p. 728. Papa non habet in Canone, quo lædere possit jurisdictionem Episcoporum. Nec legitur antiquos Pontifices se de his intromississe.

[3] Marca, Book vii., chap. xxvi, No. 8.

"*Sextus Decretalium*,"[1] by Boniface VIII., the "*Clementinæ*" of Clement V.,[2] the "*Extravagantes*"[3] of John XXII., the Rules of Chancery,[4] and the immense number of Bulls which, up to our own time, have been perpetually flowing from the Papal Chair—such that the life of one man would not suffice even to read through them.

In this manner the Bishops were so stripped of their authority that the Chancellor of Paris, even in his time, called them "painted figures," or as we should say in Portuguese, "*humas sombras de Bispos*," mere shadows of Bishops. The whole passage from Gerson is worthy of being transcribed. "With the increasing avarice of the Clergy, and cupidity of the Pope, the power and authority of the Bishops seems to have been exhausted

[1] *Sextus Decretalium*—so called because it was supplementary to the five volumes of Decretals previously published by Gregory IX., containing besides the Decretals subsequent to the time of Gregory, the decrees of the two Councils of Lyons, in 1245 and 1274. It was published about 1300.—TRANSL.

[2] *Clementinæ*—so called from Clement V., their author, but published by his successor, John XXII. They contain the acts of the General Council of Vienne, 1311, with some other of his Constitutions and Decretal Letters.—TRANSL.

[3] *Extravagantes.* All the Pontifical Constitutions, composed subsequent to the publication of the *Decretum* of Gratian, were originally designated by the common title of *Extravagants*, "eo quod *extra* volumen illud recepti prius juris *vagarentur*." But when the collection of Gregory IX. was put forth, inasmuch as the Decretals contained in it were no longer loose, the Doctors of his time distinguished them by the word 'Extra' only, implying their being an addition to the Collection of Gratian: and from that time the term *Extravagants* was applied to new Constitutions, not inserted in any of the collections of Decretals. Two collections of Extravagants exist, one by John XXII., in 1325, containing his own Constitutions; the other, by a private hand, called the "*Extravagantes Communes*," published about the year 1484, containing the Constitutions of twenty-five Pontiffs, viz., from Urban IV. to Sixtus IV. The term is also applied to some of the Provincial Canons of our own Church, *e. g.*, those of Archbishop Stratford, published in 1342.—TRANSL.

[4] *Regulæ Cancellariæ Apostolicæ*—are also to be reckoned amongst the Pontifical Constitutions. Originally the business of the court was carried on *vivâ voce* and after no fixed Form or Rules. John XXII. first prescribed certain Rules to be observed, and appointed certain Forms of Supplications, according to which Letters in Chancery were to be expedited; various laws and rules were introduced by succeeding Pontiffs, until the time of Nicholas V., who, about the year 1448, collected the most useful of these Rules and added others. This collection was gradually increased by later Popes, and in 1762 the number of the *Regulæ Cancellariæ* exceeded 70.—TRANSL.

and utterly destroyed, so that they, WHO IN THE PRIMITIVE CHURCH WERE OF EQUAL POWER WITH THE POPE, now in the Church appear to be but painted figures, and as it were naught. Already hath the Roman Pope reserved to himself every benefice, already hath he drawn all causes to his own court," &c. [1]

This depression, and, so to speak, annihilation of the Bishops, had been lamented a hundred years before the time of Gerson, by Durandus, Bishop of Mende, (not the Speculator)[2] in the Treatise which, by order of Clement V., he composed at the Council of Vienne, A.D. 1307, entitled, "Of the manner of celebrating a General Council." Here Durandus shows, "that a Pope cannot, and should not, ordain new laws or new rights, contrary to those which the LORD or His Apostles plainly, or the holy Fathers which followed them, by their decrees, have defined; because otherwise he would evidently err."[3] Here, moreover, he shows "that the Bishops have received their power and honour from GOD, by Whom the Prelatical order has been instituted, and by Whom the Bishops have been appointed in room of the Apostles, in the several cities and Dioceses." [4] Whence he concludes, that the Bishop has in his Diocese "*de jure*," authority and jurisdiction over all, and that without

[1] Gerson, vol. ii. p. 174. De modis uniendi, &c., § de Reform. morum, &c. Quam quidem coactivam potestatem nulli summi Pontifices per successiones temporum et contra DEUM et justitiam sibi applicarunt, privando inferiores Episcopos postestatibus et auctoritatibus eis a DEO et Ecclesia concessis. QUI IN PRIMITIVA ECCLESIA ÆQUALIS POTESTATIS CUM PAPA ERANT. . . . . Crescente Clericorum avaritiâ et Papæ cupiditate, potestas et auctoritas Episcoporum quasi videtur exhausta et totaliter diruta: ita ut jam in Ecclesiâ non videantur esse nisi simulacra depicta, et quasi frustra. Jam enim Papa Romanus reservavit omnia beneficia Ecclesiastica, jam advocavit omnes causas ad Curiam suam, &c.

Quid hodie erant Episcopi nisi umbra quædam? Quid plus eis restabat quam baculus et mitra?—Æneas Sylvius, Hist. Council of Basle.

[2] Durandus, p. 34, 35. He was nephew to the Speculator: both bore the same name, viz., William Durandus, and both were Bishops of the same See.

[3] Quod Papa non potest nec debet novas leges aut nova jura condere contra ea quæ aperte DOMINUS vel Ejus Apostoli, et eos sequentes Sancti Patres sententialiter definierunt: quia aliter errare probaretur.

[4] Quod Episcopi potestatem et honorem suam receperunt a DEO, a Quo ordo prælationis est institutus, et a Quo Episcopi in loco Apostolorum constituti sunt in singulis civitatibus et Diœcesibus.

evident necessity or good to the Church, the Pope neither could nor ought to grant so many exemptions to the Monasteries of Religious and other Ecclesiastical Communities. He desires also that some measures should be taken that "the Roman Church might not, (beyond and in contravention of the foregoing, without a General Council,) extend the reins of the plenitude of power."[1] Also, "that the Lord Pope should not be styled Universal Pontiff of the Church, since Gregory forbids this."[2]

Not that Durandus intended to deny or to diminish the authority and power which, as Primate, the Pope possesses in all the Church, since throughout the work he recognizes this power in common with all Catholics; but his meaning was, that the Pope, by virtue of his title of Primate of the Church, was not to arrogate all to himself, robbing the other Bishops of their rights. Whence he had before in another part written this memorable sentence: "It is a common proverb, that he who wishes for all, loses all. The Church of Rome claims every thing for herself; therefore one may fear lest she lose every thing." Thus wrote and thus declared his sentiments, a most learned and most pious Bishop, the favourite of Clement V., who by the fame of his doctrine and zeal was the soul of the Council of Vienne. This work was printed separately at Paris in 1671, in octavo, and was joined with many others in the great collection dedicated to Gregory XIII., under the title of "*Tractatus Tractatuum.*"

The passages in the works of Gregory the Great to which Durandus refers, are in Book v. Epistles 18 & 43; and in Book vii. Epistle 30.

"No really holy man hath presumed to permit himself to be called Universal Bishop. No Bishop of the Apostolic See hath arrogated to himself this rash title, lest by appropriating to himself the glory of singularity in the Pontifical rank, he should seem to have denied it to all his brethren."[3]

[1] p. 282. Quod Romana Ecclesia ultra et contra prædicta non posset absque Generali Concilio, habenas extendere plenitudinis potestatis.

[2] Quod Dominus Papa non vocaretur Universalis Pontifex Ecclesia, cùm hoc prohibeat Gregorius.

[3] Episcopus Universalis vocari nullus præsumpsit, qui veraciter sanctus fuit. Nullus Apostolicæ sedis Antistes sibi hoc temerarium nomen arripuit: ne si sibi

"No one of my predecessors ever consented to use such a profane title, because if we speak of one Universal Patriarch, we deny the name of Patriarch to the others."[1]

"Your Holiness in styling me Universal Pope, denies that you are yourself what you allow that I am universally. But away with this—away with expressions, which do but inflate our pride and wound charity."[2]

And again in the same Letter—

"I do not regard that as an honour paid to me, by which I am conscious that my brethren are deprived of the honour belonging to them. For the honour of the Universal Church is my honour: the unimpaired vigour of my brethren is my honour."[3]

It was, then, the opinion of Pope S. Gregory the Great, that even by styling himself "*Universal Bishop,*" the Roman Pontiff offended against the rights of the other Bishops. What then would this S. Gregory have said, could he have seen the Bishops in the condition in which, eight hundred years after, Gerson saw them, when he called them "*painted figures*"? And what would Gerson have said, could he have foreseen how in these days the Bishops of Portugal would hold themselves obliged to observe, and to cause to be observed, Bulls which have neither been sent to them, nor promulgated by them, in the Provinces or Dioceses, (as the Canons and the ancient practice of the Church direct, and as even temporal Sovereigns are accustomed to act, in all their laws,) merely because, by private intelligence, they have come to know that such Bulls have been posted in Rome, *ad Valvas,* and in the Campo di Flora? What would he say if he could see those

in Pontificatûs gradu gloriam singularitatis arriperet, hanc omnibus fratribus denegasse videretur.

[1] S. Greg. Tom. vii., Book v., Ep. 43. p. 327. Nullus unquam Decessorum meorum hoc tam profano vocabulo uti consensit: quia videlicet si unus Patriarcha Universalis dicitur, Patriarcharum nomen cæteris denegatur.

[2] Tom viii., Epis. Book viii., Ep. 30, p. 33. Universalem me Papam vestra Sanctitas dicens, negat se hoc esse quod me fatetur universum. Sed absit hoc; recedant verba quæ vanitatem inflant et caritatem vulnerant.

[3] Tom viii., Epis. Book viii., Ep. 30, p. 32, 3. Nec honorem esse deputo, in quo Fratres meos honorem suum perdere cognosco. Meus namque honor est honor universalis Ecclesiæ. Meus honor est Fratrum meorum solidus vigor.

same Bishops embarrassing and encumbering themselves with a Declaration of the Cardinals Interpreters of the Council, or with some Decree of the Congregation of Rites, merely because they found them cited in Barboza[1] or Lacroix? What would he say, could he see these same Bishops sending to Rome for leave to read a book which they only know to be prohibited by seeing it inserted in the Index which yearly appears here solely upon the authority of the booksellers who sell it? Or, lastly, what would he say, could he see the Roman Theologians clinging to their opinions as to so many dogmas of the Catholic Faith, and wounding with the bitterest censures all who differ from them, even though they be holy Fathers of the first class? As when Christianus Lupus, in his notes to the Council of Sardica, attributes what S. Basil wrote concerning the Romans (Epistle 239) to a choleric disposition induced by much fasting; "What help shall we obtain from the superciliousness and pride of the Occidentals, who have neither known the truth nor endure to learn it?" upon which Lupus says, "Basil exclaims against them, being like most studious men, prone to irascibility through much fasting.[2]"

The whole doctrine of this first principle will receive further light from what we shall have to produce subsequently, in proof of the fifth. In the mean while let us listen to Cardinal Cusa.

"We know that Peter received no more authority from CHRIST than the other Apostles. For nothing was said to Peter which was not also said to the others. If it was said to Peter, 'whatsoever thou shalt bind on earth,' was it not also said to the others, 'whatsoever ye shall bind'? and although it was said to Peter, 'Thou art Peter, and upon this rock I will build My Church'; yet by the Rock we must understand CHRIST, Whom Peter confessed. . . . . And if it was said to Peter 'Feed my Sheep,' yet it is clear that that feeding is by word and example. Thus also, according to Augustine, the same command was delivered to all. . . . . Nothing else is found

[1] Agostinho Barboza, a Portuguese Doctor, who wrote during the first half of the seventeenth century. He wrote, amongst other works, three books "*Juris Ecclesiastici Universi*"; also "*Collectanea Doctorum in Jus Canonicum.*" —TRANSL.

[2] In iram frequenti jejunio, studentium more, pronior Basilius clamabat.

to have been said to Peter which imports any power. Therefore we rightly maintain that all the Apostles were equal to Peter in power. . . . . HENCE WE DISCOVER NO OTHER SINGULARITY IN PETER THAN THIS; THAT HE WAS CHIEF IN ADMINISTRATION.[1]"

[1] Cusa Lib. ii. cap. 13, p. 726. Scimus quod Petrus nihil plus potestatis à CHRISTO recepit aliis Apostolis. Nihil enim dictum est ad Petrum quod etiam aliis dictum non sit. Nonne sicut Petro dictum est, "Quodcunque ligaveris super terram"; ita aliis, "Quodcunque ligaveritis"? Et, quamquam Petro dictum est "Tu es Petrus et super hanc petram," tamen per petram CHRISTUM Quem confessus est intelligimus. . . . . Et si Petro dictum est, "Pasce oves Meos," tamen manifestum est quod illa pascentia est verbo et exemplo. Ita etiam secundum Augustinum omnibus idem præceptum. . . . . Nihil reperitur Petro aliud dictum, quod potestatem importet aliquam. Ideò recte dicimus omnes Apostolos in potestate cum Petro æquales. . . . . QUARE HOC SOLUM SINGULARITATIS IN PETRO INVENIEMUS, QUOD IPSE FUIT MAJOR IN ADMINISTRATIONE. See Appendix.

THE SECOND PRINCIPLE.[1]

PREVIOUSLY TO THE EXISTENCE OF ANY BODY OF LAWS OR CANONS IN THE CHURCH WHICH, AS A COMMON RULE, REGULATED UNIVERSALLY ALL MATTERS OF DISCIPLINE, THE BISHOPS WERE THEY WHO IN THEIR PROVINCIAL SYNODS ESTABLISHED THE IMPEDIMENTS TO MARRIAGE, SOME SOONER, SOME LATER, AS THE NECESSITIES AND ADVANTAGE OF THEIR DIOCESES DEMANDED.

BODY OF ORIENTAL CANONS.—THE CANONICAL RULES OF S. BASIL.—THE COLLECTION OF DIONYSIUS EXIGUUS.—DECRETALS OF S. SIRICIUS AND S. INNOCENT I.—CANONS OF FRANCE, SPAIN, AND AFRICA.

PROOFS.

As to what concerns the East, it is a certain and well-known fact, by the Acts of the Council of Chalcedon, that the code or compilation of Laws, used by the Greek Churches in the middle of the fifth century, contained no more than 165 Canons, viz.: those of Nicæa, Ancyra, Neocæsarea, Gangra, Antioch, Laodicea, and Constantinople; but amongst these there are scarcely to be found three which treat of impediments to Marriage: these are the eleventh of the Provincial Council of Ancyra, held in

[1] We have thought it right to give this chapter at length, though its immediate subject will be less interesting to the English reader, not only because that subject is treated with great ability, but because it serves as a proof in the concrete of what is elsewhere advanced in the abstract concerning Ultramontane usurpations. —TRANSL.

314, which establishes the impediment of "Rape";[1] the second of the Provincial Council of Neocæsarea in the same year, 314, which (Can. 2) enacts the impediment of "Affinity,"[2] and annuls marriage contracted with the brother of a deceased husband; and the tenth of the Provincial Council of Laodicea, A.D. 364,[1] which makes "difference of Religion" an impediment, in order that the sons of Clerks should not marry heretics. It follows therefore, that in the earliest ages the Bishops were they who, in their Provincial Synods, defined impediments to marriage, according as they judged them to be required by the necessities of the times.

This is confirmed by the Canons called "*Apostolical*," and which according to the most probable opinion, were made in the third century; of these the twenty-seventh enacts the impediment of "*Order*," forbidding all Clerks, above the rank of Reader and Chanter, to marry.

II. Indeed, S. Basil, Archbishop of Cæsarea in Cappadocia, who flourished about the year 370, in his 160th Letter (or according to others the 197th) which is written to Diodorus, speaking of the impediment of affinity between brothers and sisters-in-law, clearly declares that this and other impediments derived all their force and authority from the law or usage established in that Province by the holy Bishops. "First then, (which in matters of this kind is of the greatest importance,) we are able to assert the custom which prevails amongst us, because it has the force of law, since these sanctions have been transmitted to us by holy men. But this custom is as follows: if any man, impelled by impure desires, has fallen into the excess of an unlawful intercourse with two sisters, neither shall such an union be considered a marriage, nor shall the man be admitted into Church before the parties have separated."

I have quoted this passage from Gerbais, but in order to show that I have compared it with the fountain-head, I have referred in the margin to the edition of the Fathers of S. Maur, which I found to be substantially the same.

S. Amphilochius, Archbishop of Iconium, had various consultations with S. Basil concerning certain points of Discipline,

[1] Labbe, Tom. i. p. 1459. [2] Labbe, Tom. i. p. 1482.
[3] Labbe, Tom. i. p. 1498.

amongst which were many relating to the impediments to marriage, and these inquiries of S. Amphilochius confirm the statement that, towards the end of the fourth century, there existed no common law in general reception, which treated in particular of these impediments, but that each Province was governed by its own Canons and Customs.

S. Basil replies to the inquiries of S. Amphilochius by two letters, in which he lays down the several laws and customs upon each point, which he found to have been established by the most ancient Bishops. These two letters are commonly called "*Canonical*,"[1] because they contain as many Canons as there were questions from Amphilochius. In fact, in Canon 6, Basil grants that the impediment of *the vow* was established by the Provincial Council: in Canon 22, that of *Rape*; in Canon 23, that of *Affinity*; in Canon 40, that of *Servitude*; in Canon 42, that which declares the marriages of sons contracted against the will of their parents to be void; and in Canons 68 and 87, that of consanguinity.

III. Passing on, now, to the West, it is equally certain that until the beginning of the fifth century, the Roman Church had raised no other Canons to the dignity of public authority, than those of Nicæa, none of which treat of marriage. It appears in so many words, from the Epistle of Innocent to the clergy of Constantinople, and from his other Epistle to Theophilus of Alexandria. It is also undeniable, from the sixtieth Epistle of S. Ambrose, written to Paternus, about the end of the fourth century, that at this time the impediment of consanguinity was not general in the Church, at least by the Canon law, and that each Bishop ruled his Diocese in this respect either by what the Imperial laws ordained, or according to his individual judgment.

The first part of this observation appears from the subject of the Epistle from Paternus to S. Ambrose, which is, whether his son might marry his relation.[2] In reply, the Saint declares such

[1] S Basil, Tom. iii. Ep. 188 & Ep. 199, pp. 149 & 160.

[2] Ep. 65, ed. Paris, 1549. So Pereira, vaguely. It was the daughter of his half-sister to whom Paternus wished to marry his son. "Ambrosius Paterno. Paterni quidem unanimis mei salutationem legi, sed consultationem nequaquam paternam, *ut velis filio neptem copulare ex filia*, sed nec avo te nec patre dig-

a marriage to be not suitable, and grounds his opinion upon the Divine law, and a modern Constitution of the Emperor Theodosius. "If the Divine commandments do not affect you, at least you ought not to overlook the Imperial Laws."[1] What Divine Law this is which S. Ambrose supposes to prohibit the marriage of such relations, the learned Benedictine Editor professes his ignorance, neither do I know myself. It is enough for us, that it assures us that the Saint does not refer to any Canonical Law upon the subject, a sign that as yet there was none.

The second part appears from the same Epistle, where Paternus affirms that his own Bishop had ordered him to consult S. Ambrose, showing that he would abide by his decision:—"You inform me that my opinion on this subject is looked for by the holy man, your Bishop."[2]

In the middle of the sixth century, the Collection of Dionysius Exiguus began to find its way into the West, consisting, in part, of the Oriental Canons, and, in part, of the letters of the Roman Pontiffs to particular Churches. Amongst these is the celebrated Letter of Pope Siricius, in reply to certain inquiries made of him by Himerius, Archbishop of Tarragona,[3] which affords plain confirmation of the assertion that at the end of the fourth century, no body of Ecclesiastical Laws or Canons was either published, or generally received, which regulated the impediments to marriage: for had there been such, Himerius could not have been ignorant that by *espousals* the impediment of "*public honesty*" was contracted; nor could his Clergy have been ignorant that by the *ordination* vow the impediment of "*the vow*" was incurred, whereas from the letter of Siricius it appears that they were ignorant of this. The same argument may be used with respect to another no less celebrated letter of that period,[4] that of Pope Innocent I., in answer to Victricius,[5] Arch-

nam . . . . tu copulare pares filium tuum; et neptem ex filio, hoc est ut accipiat sororis suæ filiam, diversa licet matre quam socrus editus."—TRANSL.

[1] S. Ambrose, Ep. 60. class. i. vol. iii. p. 1103. Si divina te prætereunt, saltem Imperatorum præcepta haudquaquam præterire te debuerunt.

[2] Super hoc meam à sancto viro Episcopo vestro expectari sententiam dicis.

[3] Cutant. p. 628. [4] P. 753, &c.

[5] Victricius, Archbishop of Rouen, born somewhere about the year 330. He was originally a soldier, and for demanding leave to quit the army in order to

bishop of Rouen, chapters 10 and 12, and from the Canons which the same Pope (according to the conjectures of Sirmondus and Labbe) sent to the Bishops of France, the twelfth and fourteenth of which give directions to them relating to the impediment of "*affinity.*" Whence we may be quite convinced that the impediments which were in force in the first ages were those which had been established in the Synods of the different provinces, by their respective Bishops, or such as were by them received and learned from the Church of Rome.

IV. Indeed nearly a hundred years before the Pontificate of Siricius, that is, about the year 305, the Bishops of Spain, in the Council of Elvira, established the impediments of *the vow, difference of religion, order,* and *affinity,* as may be seen in Canons 13, 15, 16, 17, 33, 61, and 66.[1] With the like authority and previously to the Pontificate of Innocent, *i. e.,* in the year 397, the Fathers of the Third Council of Carthage, by the third Canon,[2] ordered that neither the sons nor daughters of the Clergy should marry with Gentiles, heretics, or schismatics: and in the nineteenth Canon they compelled the *Readers* either to marry or to take the vow of chastity on coming to years of discretion. The same Fathers in the year following, in the Fourth Council of Carthage, Canon 104,[3] declared the marriage of widows, after profession of chastity, to be adulterous.

S. Patrick, Primate of Ireland, in 456, amongst other Canons enacted in Synod, made one, the seventeenth, in which he condemns marriages contracted by young women who had made a vow of chastity. Also, by the twenty-fifth Canon of another Synod, he established the impediment of affinity with respect to brothers and sisters-in-law.[4]

V. This authority on the part of the Bishops is no less conspicuous in the Synods of France and Spain. The Fourth Council of Toledo, celebrated in the year 633, where, amongst

devote himself to a Christian life, he was condemned to be beheaded. From this fate he was, however, miraculously saved, the executioner being struck blind at the moment when about to inflict the blow. After this, he received the Emperor's pardon, and went into retirement, and subsequently became Archbishop of Rouen. He was a friend of S. Martin of Tours.—TRANSL.

[1] Labbe, Vol. i. p. 972.
[2] Labbe, p. 1169.
[3] Ibid., p. 1207.
[4] Ibid., Vol. iii. p. 1479.

others, eight Portuguese Bishops were present, ordains in Canon 44,[1] that Clerks who, without giving notice to the Bishop, shall marry widows, divorced women, or prostitutes, shall be compelled by the Bishop at once to separate from them. In the thirteenth Synod held at the same place in the year 683, at which about nine Portuguese Bishops were present, a new impediment of "*Rank*" was established by the fifth Canon, which strictly prohibited any man of whatsoever degree (not excepting even Kings and Princes,) from marrying the widow of any of the Kings of Spain, who then were Goths.[2] This Canon was confirmed by Ervigius, the reigning sovereign at the time, as appears from his Edict given at the end of the Acts of the Council. The Third Council of Saragossa held in 691, Canon 5, after renewing the Canon of Toledo about the royal widows, adds, that upon the King's death, his widow shall at once retire into some monastery, where, in the nun's habit, she shall spend the remainder of her life unmarried.[3]

The First Council of Orange, A.D. 441, Canon 21,[4] orders that married men shall not be promoted to the order of Deacons without having first made a vow of continence.

The Fourth Council of Orleans, A.D. 541, Canon 24,[5] annuls marriages contracted by slaves, who with the hope of marrying, fled from their parents or masters to the bounds of churches.

The Second Council of Tours, A.D. 567, Canon 21,[6] declares marriages contracted between parties connected by bonds of consanguinity and affinity, to be incestuous, and prohibited under pain of excommunication. And the grounds alleged for this prohibition are not any Canons either of the Roman or the Universal Church, but the Law of Leviticus, chapter xviii., the civil laws of the Code of Theodosius, and the previous Canons of the Gallican Church. Which shows that without the positive laws of earthly superiors, the Bishops have power to establish such impediments of their own authority.

Further, in the middle of the twelfth century, when Alexander III. was Sovereign Pontiff, the Gallican Church possessed

[1] Labbe, Vol. v. p. 1717. Aguirre, Tom. iii. p. 374.
[2] Tom. iv. p. 282.
[3] Tom. iv. p. 319.
[4] Labbe, Vol. iii. p. 1450.
[5] Labbe, Vol. v. p. 385.
[6] Ibid., p. 871.

and exercised the power of dissolving marriages on account of impotence, whilst at the very same time the Church of Rome observed the contrary discipline. This appears from the letter of Alexander to the Bishop of Amiens, which Launoy relates in his tracts upon Marriage. [1]

VI. I will conclude this Principle with the remark, that the practice of the Bishops as to other matters of discipline was the same with that relating to marriage. Each province was governed by its own Canons, and those which had none adopted the Canons of other provinces. Hence the origin, in the fifth century, of the collection of the Canons of the African Church; in the sixth, of those of Dionysius Exiguus, S. Martin of Braga,[2] and Ferrandus of Carthage; in the ninth, of Bernardus Levita and the Abbot Ansegisus,[3] who compiled the Chapters of Charlemagne, of Louis the Pious, and Charles the Bald. All were founded on the principle of S. Augustine:—"In these matters, concerning which Holy Scripture has laid down nothing certain, the custom of GOD's people or the institutions of our ancestors, ought to have the force of law." [4]

[1] Launoy, Tom. iv., part ii., p. 142.

[2] S. Martin, Bishop of Braga, a Hungarian, lived in the sixth century, and has left, besides other works, a collection of Oriental Canons, to the number of twenty-five. They are to be found in Binius.—TRANSL.

[3] Ansegisus, *Abbat of Lobes*, made in 827, a collection of the Chapters of Charlemagne and Louis le Debonnaire, entitled "*Capitula seu Edicta Caroli Magni et Ludovici Pii Imperatorum.*" He is not to be confounded with Ansegisus, Abbat of S. Michael, and afterwards Archbishop of Sens.—TRANSL.

[4] In his rebus de quibus nihil certi statuit Scriptura Divina, mos populi DEI, vel instituta majorum, pro lege tenenda sunt.—See Appendix.

THE THIRD PRINCIPLE.

For many centuries the Bishops retained the power of dispensing, even with respect to the Laws enacted in Œcumenical Councils, and those of the Roman Pontiffs, and consequently in the case of impediments to marriage.

Authorities.—S. Basil of Cæsarea, Synesius of Ptolemais, Fulbert of Chartres, the Fourth Council of Carthage, and the First Council of Tours.

The arguments of Fagnanus are disposed of.—Doctrine of S. Bernard, Cardinal Cusa, John Gerson, Thomassin, and others.

Authority of Secular Princes in the case of impediments to marriage.—Dispensations of Theodoric and Reccaredus.—Opinion of Peter Soto.

PROOFS.

It is an established doctrine amongst the best Canonists and Theologians, that where the Supreme Legislator does not expressly reserve to himself the power of dispensation, the Bishop may dispense in the case of Papal Laws and those of General Councils, whenever the public necessity, or the benefit of his people, demands it. Cardinal Cusa, in his second Book "*de Concordantiâ Catholicâ,*" Cap. 20, holds this opinion; Sylvester[1]

[1] Sylvester Mozolino, surnamed *Prieras*, from Priero, the name of the village of his birth, (A.D. 1460.) He was the first Catholic who undertook upon a large scale to refute the errors of Luther. He died of the plague in 1523, leaving

Prieras, Master of the Sacred Palace, in his Summary, V. "*Dispensatio,*" No. 7; Van Espen in his Treatise "*de Dispensationibus,*" Cap. i. § 7; Barthelius in his Additions to the Canon Law, Book iii. Tit. 33; Febronius "*de Statu Ecclesiæ,*[1]" Cap. vi. § 1. No. 7.; and Gibert in his Treatise "*de Ecclesiâ,*[2]" Tit. vii. *de Prælatis,*[3]" all following the Gloss of Cap. "*Nuper,*" 29, "*de Sentent. Excommunicat.*" upon the words of Innocent III., "Sibi specialiter non retinuit," which says, "the argument here is, that Bishops may dispense in cases where dispensation is not specially forbidden."[4]

In consequence of this power in the Bishops, the great Theologian Louis Thomassin in his book *de Beneficiis,* observes, with the Canonists mentioned above, that for many ages the Bishops had the power, and were in the habit of dispensing in all Canonical Laws, even in those of general Councils.

Let us hear Van Espen. "Since the Bishops sustain the chief part in the government of the Church, the consequence is plain that, in the absence of all positive reservation, the plenary power of relaxing the rigour of the Canons is inherent in the Episcopal authority, whenever the necessity or advantage of the flock entrusted to them requires such relaxation. Which Episcopal liberty in dispensing is, in no small degree, confirmed by the fact that it appears that for many ages the Bishops retained the power of dispensing in all those articles of discipline, the relaxation of which, at this day, is known to pertain exclusively to the Apostolic See.[5]"

Let us also hear Thomassin, in the first quoted passage. "No one can doubt but that in the first and second, and even in the third

several works, amongst them his Summary, called "*Sylvestrina.*" A work in Latin, upon the detection and conviction of heretics, republished at London, in 1690, is falsely attributed to Prieras.—TRANSL.

[1] Barth. p. 157. [2] Febron. p. 262. [3] Gibert, tom. ii. pp. 102, and 103.

[4] Est hic argumentum, Episcopos posse dispensare ubi specialiter dispensatio non est inhibita.

[5] Cum præcipuas in regimine Ecclesiæ partes Episcopi sustineant, consequens apparet, quod sepositâ omni positivâ reservatione, Episcopali auctoritati cohæreat plenaria rigorem Canonum relaxandi potestas, quoties necessitas aut utilitas gregis sibi crediti relaxationem postulaverit. Quæ episcoporum in dispensando libertas inde non parum confirmatur: quod constet penes Episcopos plurimis sæculis fuisse dispensandi facultatem in omnibus illis disciplinæ articulis, quorum hodiè relaxatio privativè Sedi Apostolicæ competere noscitur.

century the Bishops relaxed the Apostolical Canons, and all the Decrees of that period, when public need demanded it, without the intervention of the Roman Pontiff, or of a Provincial Council.[1]"

And again, in the second quotation, when he treats of the fifth, sixth, and seventh centuries, "Certainly at that time the Bishops themselves, especially when assembled in Provincial Councils, enjoyed a very remarkable and vast power in dispensing, as has appeared from all the foregoing chapters.[2]"

The reason or foundation of this doctrine is this, that the episcopal jurisdiction and authority (as has already been shown in the First Principle,) is in itself, and by virtue of its institution, perfect and absolute, and includes every power necessary for the good government of the people committed to each Bishop's charge. And this government, as was shown in the same place, of necessity requires the power of granting dispensations in the laws when the advantage or necessity of the people requires it.

II. This Rule of the Canonists and Theologians is supported by the practice of all ecclesiastical antiquity, and amongst other Fathers, by that of that great Doctor of the Church, S. Basil, Archbishop of Cæsarea, and Primate of all the Dioceses of Pontus.

It was an Ecclesiastical Law established by the Council of Nicæa, (Canon 15,) by that of Sardica, (Canon 1,) and by that of Antioch, (Canon 21.) And even if these and other documents had been lost, the same thing might be clearly gathered from S. Jerome in the Epistle to Oceanus, from the opposition made in the first Council of Constantinople to S. Gregory Theologus, who wished to change his See, as he himself relates in his poem of his life, and from what Eusebius says in the life of Constantine, where he calls this Law Apostolical, *i. e.* introduced by the Apostles,[3]

[1] Thom. Part ii. Book iii., ch. 24, No. 14. Ne ambigi quidem illud à quoquam potest, quin primi et secundi adeoque et tertii etiam sæculi Episcopi Canones Apostolicos et Decreta ejus ævi omnia relaxarint, ubi publica id jubebat necessitas, nullo Pontifice Romano, nullo interveniente Concilio Provinciali.

[2] Thom. ch. 25, No. 15, tom. vi. p. 180. Fruebantur sane eodem tempore cæteri Episcopi, maxime in conciliis Provincialibus aggregati, eximiâ ipsi quoque et vastissimâ dispensandi facultate, ut ex iis omnibus supra capitibus emicuit.

[3] Euseb. Vita Const. Lib. iii. Cap. 62.

a law too which was renewed in the Council of Chalcedon, Canon 5, and supposed to be then very ancient: It was a law, I say, generally established in the Church, that no Bishop should change his Diocese. However, considering the necessities, and the forlorn condition of the Church of Nicopolis, the Bishops of Armenia granted a dispensation enabling Euphronius, Bishop of Colonia to become Bishop of Nicopolis. The clergy of Colonia were very indignant at the removal of their Bishop, and tried all in their power to hinder his translation, even by calling in the aid of the secular magistracy. Upon this, S. Basil, the Primate of all those Provinces, wrote two letters,[1] one to the clergy, and the other to the magistrates of Colonia, wherein he teaches both parties that they must acquiesce in the determination of their Bishops, who, looking to the advantage and necessities of the Church, had on this occasion exercised the power which GOD had given them, and the economy which the HOLY SPIRIT had suggested to them, and that they should therefore regard it for certain, that in resisting the Bishops, they were resisting GOD Himself. "An excellent arrangement has been made with respect to our most religious brother Euphronius by those to whose government the Churches have been committed: an arrangement requisite at the time, and most beneficial to the Church to which he has been translated. Do not look upon this as merely an human arrangement, but be assured that they who have the care of the Churches thus acted according to custom, and in virtue of the union which they have with the SPIRIT; being certain that they who refuse what men chosen by GOD have ordered, resist the ordinance of GOD.[2]" Thus wrote S. Basil in Epistle 227. In the following he repeats the same. "Considering, then, the difficulty of the occasion, and wisely entering into the necessity of the arrangement, forgive the Bishops who resolved upon this method of establishing order in the Churches of our Lord JESUS CHRIST."

III. Upon the same principles, the Bishops of Africa, in 398,

[1] S. Basil, tom. iii. pp. 190, 191. Ep. 227, Ep. 228.

[2] It appears that the Colonians were the rather bound to make a sacrifice for Nicopolis, in that Colonia had first received the faith from that city. Le Quien, Oriens Christ. i. 429. The forlorn condition of Nicopolis arose from the intrusion of Fronto.—TRANSL.

in the Fourth Council of Carthage, Canon 27, ordained that where the interests of the Churches required it, the Provincial Synod might permit changes, or translations, from one See to another. "If, however, the advantage of the Church requires that it should be done, a translation may be permitted for the present occasion.[1]" So that although the translation of Bishops is forbidden both by Apostolic Law, and by the decrees of General Councils, the African Bishops did not consider that the power of dispensing in this case was taken from them, when the advantage or the necessities of the Church demanded it. Thus, in Synesius, Archbishop of Ptolemais in the fifth century, we read that S. Athanasius of Alexandria translated Siderius from the Bishopric of Palebisca to the metropolitan See of Ptolemais, who, contrary to the fourth Canon of Nicæa, had been consecrated by one Bishop only. Here then we have the Bishops of Egypt, dispensing with two general laws, because, as Synesius observes, "in dangerous times, the strongest law must be put aside.[2]" We read in Socrates, how Atticus of Constantinople translated Sylvanus to the Bishopric of Philippopolis to that of Troas. In addition to which example, the same writer gives thirteen others, amongst which, *one* only of these translations was delegated to the Bishop of Rome; viz.: that of Perigenes, who was translated from Patræ to Corinth. But it is well known that the Pope had especial rights in Illyricum, as Patriarch: all the others were ordered and executed by the Bishops of the provinces.

Even in the eleventh century, the Bishops of Sicily retained the power of changing Dioceses without waiting for the consent of the Apostolic See. This appears clearly from Cap. 4, "*De Electione,*" which is by Pascal II. Whence, it will cause no surprise to any one, that the Fathers of the Sixteenth Council of Toledo, held about the end of the seventh century, by their own authority, caused the Bishops of Seville, Braga, and Oporto, to change Dioceses. From these, and many other examples, Peter de Marca, Book vii. Ch. 26, No. 8, and John Gerbais in his

[1] Labbe, tom. ii. p. 1202. Sane si utilitas Ecclesiæ id fiendum poposcerit, in præsentiâ transferatur.

[2] Synesius, Epist. 67.

[3] Socrates, Book vii., Ch. 36 and 37.

treatise "*de Causis Majoribus*,[1]" Art. x. § i, infer, that Innocent III. was mistaken, when in Cap. 2, *de Translat. Episcop.*, he affirmed that the translation of Bishops was, by Divine right, reserved to the Pope. In truth, the grounds which Innocent alleges, do not prove his assertion.

IV. It was also an Apostolic law, mentioned by S. Paul in his first Epistle to Timothy,[2] and subsequently renewed by the Council of Nicæa, Canon 2, by that of Sardica, Canon 13, and that of Laodicea, Canon 3, and mentioned likewise by Pope Siricius, in his Epistle to Himerius of Tarragona; that no neophyte or layman should be promoted to the office of Bishop. But the Bishops, by their own authority, often dispensed with this law, as did those of Cappadocia, in the case of Eusebius, Archbishop of Cæsarea, which is mentioned by Nazianzen, in his nineteenth oration[3]; those of Thrace in the case of Firmus, also of Cæsarea, mentioned by Socrates[4]; those of France, in the case of Germanus, Bishop of Auxerre, as we find related in the 38th Epistle of S. Fulbertus, Bishop of Chartres. Long before this, the same thing had been done in the cases of S. Cyprian of Carthage, and S. Philogonius of Antioch. The Bishops of France retained this authority, even as late as the beginning of the eleventh century, when they ordained by their own authority a neophyte or layman to the Archbishopric of Rheims. Amongst them was the above-mentioned S. Fulbertus, who, when relating this fact in his 38th Epistle, exhorts another Bishop of the same province, not to fear that the Pope would take this dispensation amiss, since the necessities of the Church of Rheims rendered it altogether irreprehensible. "The Lord Pope will have no just cause to be angry with you, should he hear that you had provided some hope of a resurrection to the holy Church of Rheims,[5] now so grievously fallen."

In the same manner a second marriage always, and everywhere, incapacitated the clergy for Holy Orders and the Episcopate. This appears from S. Paul, 1 Tim. Chap. iii., and Titus,

[1] Marca, P. ii. p. 371. Gerbais, p. 271. [2] 1 Tim. iii. v. 6.

[3] § 36. [4] Book vii. Ch. 48.

[5] Biblioth. Patrum, Tom. xviii. p. 15. Dominus Papa non habebit quod tibi merito debeat succensere, si te graviter collapsæ Sanctæ Remensi Ecclesiæ aliquam spem resurrectionis audierit providisse.

Chap. i., and it was expressly enacted by the sixteenth of the Apostolical Canons renewed by the Popes Siricius, Innocent, and Leo the Great, and may be gathered from the ancient Fathers and Councils generally received in the Church.

Nevertheless we know, from Theodoret, Bishop of Cyrus,[1] that many Bishops remarkable for their learning and sanctity, frequently dispensed with this Apostolical law; as Alexander of Antioch, Acacius of Berea, Praylius of Jerusalem, Proclus of Constantinople, and others, by whose example Theodoret defends his own conduct in the case of Irenæus, in ordaining him Archbishop of Tyre, although he had been twice married. But what is more surprising in this matter is, that notwithstanding the eleventh Decretal of Siricius, and the twelfth of Innocentius the First, that they who had either been twice married, or had married widows, were incapable of ordination, and ought to be deposed; the Council of Toledo, Canon 3, and the First Council of Orange, Canon 25, both dispensed with these Pontifical laws. The first, in order that those who had married widows, might remain in holy orders; the second, that such as had twice married might be promoted to the order of Sub-deacon. Socrates also observes, that although it was a general law not to admit Catechumens to orders, the Bishops of Alexandria were in the habit of promoting such to the order of Readers and Singers.[2]

It was also a generally received and established law, that no one below the rank of Deacon should be elected Bishop; this appears from the fifty-second Epistle of S. Cyprian[4] to Antoninus; from S. Gregory Nazianzen, in his twentieth oration; from the tenth Canon of the Council of Sardica, from the abovementioned Epistle of Siricius, and from the 84th of S. Leo the the Great. S. Augustine nevertheless, considering the wants of his people, consecrated a certain Antonius Bishop of Fussala, in the Diocese of Hippo, whom he himself in his 209th Epistle testifies, was of no higher rank than that of reader.[4]

Also the eighth Canon of the Council of Nicæa referred to by Sozomen and Theodoret, declares that there should not be two

[1] S. Aug. Tom. ii. p. 777. g.
[2] Theod. Ep. 110.
[3] Book v. Ch. 22.
[4] S. Cyp. Ep. 52. S. Greg. Naz. Orat. x.

Bishops in the same city. Nevertheless, S. Meletius of Antioch, to avoid schism and discord between himself and Paulinus his competitor,[1] agreed with him that they should both be pastors of that city, dividing between them the flock of CHRIST. This is a notorious fact which, amongst other historians, Theodoret describes in his fifth Book, Ch. 3, and which was sanctioned by S. Basil, the two Gregories, and nearly the whole of the East.

Finally, it was an inviolable law of the whole Church, that no Bishop should hold an ordination out of his own Diocese; nevertheless, we know upon the authority of Socrates,[2] that S. Athanasius ordained many in divers Churches which were not his Suffragans. We know further by the authority of Theodoret, that S. Eusebius of Samosata, a city of which Hierapolis was the Metropolitical See,[3] compassionating the necessities, and the want of Catholic ministers experienced by many churches during the persecution of Valens, ordained many Bishops and Presbyters in Syria, Phœnicia, Cilicia, and Palestine.

VI. Passing on now to marriage dispensations, it is, in the first place, certain, that if the Bishops had power to *impose* impediments, (as we have already shown,) they had likewise the power to *dispense* with them, by the rule "cujus est ligare, ejus est solvere.[4]" Secondly, it is certain, that during the first ten

[1] This well known case may briefly be stated thus. S. Eustathius of Antioch having been deposed by the Arians in A.D. 321, was succeeded in turn by seven Arian Bishops, of whom Eudoxius was the last: Anianus was then consecrated Prelate of the vacant See; but was speedily ejected to make way for S. Meletius, then Bishop of Berrhæa, whom the Arians looked on as a creature of their own, A.D. 361. He, however, soon began to preach the Faith of the Consubstantial: and after a month's episcopate was expelled as a Sabellian, to make way for the infamous Euzöius. On this, the Catholics, who had not hitherto openly separated themselves from the Arians, held their own assemblies in the Palæa. After a year's enjoyment of his dignity, Euzöius was compelled to retire from Antioch, when the accession of Julian gave leave to the Catholic Bishops, and among them to S. Meletius, to return to their Sees. But Paulinus, a Presbyter of Antioch, was unhappily ordained its Bishop by Lucifer of Cagliari: and a schism thus began which lasted eighty-five years. Both parties were Catholic: but the Meletians, distinguishing *essence* from *hypostasis*, asserted three hypostases on the HOLY TRINITY: the Paulinians, confounding the two words, asserted one. The East sided with S. Meletius; the West with Paulinus: the Church Catholic has since, by canonizing the former, taken the Oriental view of his merits. The concordat, afterwards unhappily broken, was as stated in the text.—TRANSL.

[2] Theod. v., c. 3. [3] Socrates, ii., c. 24. [4] Theod. v., c. 4.

or twelve centuries, marriage dispensations were very rare and difficult to be obtained, as may be seen by the curious in such matters, in Van Espen.[1] Thirdly, it is certain, that some remarkable examples of such dispensations, granted by Bishops, are to be found in the earliest ages; and Basilius Pontius[2] declares, that for many centuries, it was the Bishops who both *imposed* and *removed* impediments. One of these impediments, as is well known, is the Holy Order of Priest, Deacon, or Subdeacon, an impediment which, as may be gathered from the ancient Councils and Fathers, and as Natalis Alexander[3] has shown, is as old in the Church as the Church herself.

In virtue of this order, and out of respect for the sacred service of the Altar, the clergy were disabled not only from contracting marriage *after* ordination, but also from living with the wives to whom they had been lawfully married before ordination. It is a question among theologians, whether Orders annul marriage, "*ex vi*" of the law of the Church which has so ordered it, or "*ex vi*" of the vow of chastity annexed to Orders. The Council of Trent, leaving this theological point untouched, merely defined in Session 24, Canon 9, that marriage is annulled by Holy Orders. Under any circumstances it cannot be denied, that when the 26th Apostolical Canon (which permitted the clergy in minor Orders alone to marry after their ordination) was in force throughout the Church, the Bishops of the Council of Ancyra in Galatia, by Canon 10, enacted that if the Deacons at their ordination declared to the Bishop that they could not live a single life, they should be permitted to exercise their Orders even in the event of their afterwards marrying. But, if they were silent upon the subject at their ordination, and subsequently contracted marriage, it was ordered that they should be suspended from the Diaconate. "Whatsoever Deacons are ordained, if at their ordination they have testified and said, that they must needs marry, because they cannot 'abide so,' if these shall afterwards marry, let them remain in the ministry, because this was permitted them by the Bishop; but if any have kept

[1] Van Espen, p. ii., tit. 13, c. 5.

[2] Pontius, book vi. c. 1. Pontius de Leon, (Basilius,) a monk of the order of S. Augustine at Salamanca, where he died in 1629. He was celebrated for his knowledge of the Canon Law, and left several works on the subject.—TRANSL.

[3] Natalis Alex. Disser. 19.

silence, and shall marry afterwards, let them be deposed from the Diaconate.[1]" Now whether this was dispensing with the *clerical vow* of continence, or with the *ecclesiastical law* which obliged to it, it is certain that it was to dispense with, or to relax, a law universally received, and one which all Theologians, and even the Holy Fathers themselves, refer to the Apostles. It is to be remarked, that the Canons of Ancyra formed a considerable part of the code by which the Eastern churches were governed in the fifth century. Whence it follows, that when the *Western* clergy, in Holy Orders, were compelled to celibacy by the Decretals of Siricius, and Innocent I., and by the Canons of Africa, Spain, and France, under pain of deposition, at the very same time the Deacons of the *East* by the Canons of Ancyra were permitted to marry after ordination, and still to continue in the exercise of their ministry.

In the seventh century, the Bishops of the Council in Trullo, in Constantinople, (whose number exceeded two hundred,) enacted in Canon 13, that the orders of Priest, Deacon, and Sub-deacon should be no impediment to cohabitation in the marriage state previously contracted. "We decree that the lawful marriages of men in Holy Orders shall henceforth be firm and stable, neither dissolving their union with their wives, nor depriving them of its mutual use at convenient seasons."

VII. By this Canon, not only the schismatical but the Catholic Greeks are governed to this day. It is true that the Western Church never admitted it, but it nevertheless proves the great power of the Bishops, in the matter of impediments and irregularities. Add to this that, although the law of continence of Priests and Deacons, even when they were married, was in force in the West, from the fourth century, at least, and onwards, yet nevertheless it cannot be denied that in those times the Bishops of some provinces relaxed the rigour of the Canons; mitigating even the Pontifical constitutions, and tolerating in the case of some Priests and Deacons the use of marriage without depriving them of their grade. By the Decretal of Siricius, directed by Himerius of Tarragona to all the Bishops of France and Spain, Ch. 7, the Pope imposed the penalty of deposition upon all Priests and Deacons living with

[1] Labbe, tom. i. p. 1460.

their wives after ordination, so that they might not exercise any clerical function in the Church: "Let them know, that they are cast down from every ecclesiastical honour, nor can they ever again touch the Divine Mysteries.[1]" The same law was renewed a few years afterwards, by Innocent I. in his Epistle to Exuperius of Tolosa, Ch. 1. However, the Fathers of the first Council of Toledo ordered, in partial mitigation of the penalties imposed by the constitution of Siricius, that Priests and Deacons, guilty of incontinence, should be no otherwise punished than by being made inadmissible to the higher dignities. "Placuit ut Diaconi, siqui incontinenter cum uxoribus vixerint, Presbyterii honore non cumulentur. Siquis vero ex Presbyteris filios susceperit, de Presbyterio ad Episcopatum non admittatur.[2]" The Fathers of the first Council of Orange, A. D. 441, (mitigating the penalties imposed by Innocent,) in Canon 24, ordered the same, referring to the decree of the Council of Turin. "With regard to those who after ordination have committed this act, the sentence of the Council of Turin is to be followed, in which they are forbidden further promotion.[3]"

Again, the Fathers of the first Council of Tours, in the year 461, speaking of the same matter, clearly declare by these words, that they dispense with the rigour of the laws. "Although, by the authority set forth by our ancestors, it was enacted that any Priest or Deacon convicted of begetting children, should be compelled to abstain from the Lord's Communion, we however, moderating the rigour of this severity, and mitigating a constitution in itself just, have thus decreed, that no Priest or Deacon abiding in incontinence, shall be promoted to a higher grade. Let this suffice for such, so that they be not excluded from Communion.[4]"

[1] Just. p. 192. Noverint se ab omni Ecclesiastico honore dejectos, nec unquam posse divina attrectare mysteria, &c.

[2] Labbe, tom. ii. p. 1223.

[3] Labbe, tom. iii. p. 1450. De his qui prius ordinati in hoc ipsum inciderunt, Taurinatis Synodi sequendam esse sententiam, qua jubentur non ulterius promoveri.

[4] Licet à Patribus nostris emissâ auctoritate id fuerit constitutum, ut quicumque Sacerdos vel Levita filiorum procreationi operam dare fuisset convictus, à communione Dominicâ abstineretur: nos tamen huic districtioni moderationem adhibentes, et justam constitutionem mollientes, id decrevimus; ut Sacerdos vel Levita conjugali concupiscentiæ inhærens ad altiorem gradum non ascendat. Sufficiat his tantùm, ut à communione non efficiantur alieni.

Louis Dupin has already declared in his "proofs of the declaration of the clergy of France,[1] that this Canon of the Council of Tours "apporte une modification aux Decrets des Papes Sirice et Innocente Ire touchant le célibat des Prêtres et des Diacres." And the same thing is to be inferred from the other cases which we have mentioned relating to France and Spain, which merely prohibit these transgressors of the law of celibacy from being promoted to a higher order. It must be remarked, that in those times men, about to be ordained Priests or Deacons, were accustomed to make a solemn vow that they would maintain continence even with the women with whom they had previously lived in the married state. This appears from the above-mentioned first Council of Orange, Canon 23, and from the second Canon of the Second Council of Arles, as Natalis Alexander observes, in the Dissertation above referred to. Yet, notwithstanding the vow and the law, the Bishops allowed Priests and Deacons to continue in the exercise of their orders, in cases where it was known that they persisted in keeping their wives. They thus dispensed with the law, or for the sake of expediency tolerated the breach of celibacy, even should we decline saying that they dispensed with the vow.

VIII. Let us proceed now to the impediments of consanguinity and affinity. Christianus Lupus and John Gerbais tell us, that even in the twelfth century, these dispensations were obtained from the Apostolic See with great difficulty. And Thomassin testifies that Martin V. in the beginning of the fifteenth century, was the first who granted a dispensation to a sovereign Count to marry the sister of his first wife. However, S. Augustine, in his time, says, in the fifteenth Book *de Civitate Dei*, Cap. 16, that since the marriage of cousins was not forbidden by the Civil law, the Bishops sometimes, though very rarely, permitted such alliances. "Even in our own times we have experienced in the marriage of cousins how rarely, (on account of the degree of relationship being nearest to the fraternal degree,) from a moral feeling it took place, though it were allowed

[1] Dupin De la Puissance Eccles. p. 640.

[2] Christianus Lupus, born at Ypres in 1612, a monk of the order of S. Augustine, said to have studied fifteen hours daily. He has left a commentary upon the History and Canons of the General and other Synods.—TRANSL.

by the laws, because neither has the Divine command forbidden it, nor yet had the laws of man done so.[1]"

The Emperor Theodosius prohibited these marriages, by a law which is no longer extant, but which S. Ambrose mentions in his sixtieth Epistle, and Cassiodorus, in the seventh Book *Variarum Epistolarum*,[2] Cap. 46, and to which S. Augustine alludes in the above passage. Upon the death of Theodosius, in the year 395, his son Arcadius abrogated this law, removing the prohibition of marriage between cousins. This appears from the famous law "*Celebrandis*," 19 Cap., "*de Nuptiis*. Now, Arcadius died A. D. 408, and it is certain that S. Augustine did not write the fifteenth Book of "the City of God," till some years after that date; and yet, a little further on, the Saint attests, that when he wrote, the Church did not permit marriage between cousins; "Who can doubt that the marriages of cousins are at this time prohibited by the Church, and that with more propriety.?[3]" Whence I infer, that the Bishops did not even then admit the civil law of Arcadius into the Ecclesiastical courts; they rather placed an impediment to the marriage of cousins, either because they did not consider the law of an Emperor of the East, to be binding upon them, or because they preferred the honour of the Sacrament to any permission of the civil courts.

IX. Two inferences may be drawn from this passage of S. Augustine: first, that before the prohibition of marriage between cousins by the civil laws, the African Bishops permitted such marriages, but that after the great Theodosius had forbidden the marriage of cousins, the African Bishops likewise forbade it, paying no attention to the posterior law of Arcadius, who being Emperor of the East only, had no authority over the West, which included the African Church. Secondly: that even secular princes had power to establish absolute impediments to marriage; as the other passage from S. Ambrose's

[1] S. Augustine, p. 398. Experti sumus in connubiis consobrinorum etiam nostris temporibus, propter gradum propinquitatis fraterno gradui proximum, quàm raro per mores fiebat, quod fieri per leges licebat: quia id nec Divina prohibuit, et nondum prohibuerat lex humana.

[2] Cassiod. tom. i. p. 123.

[3] Quis dubitet honestiùs hoc tempore etiam consobrinorum esse prohibita conjugia?

letter to Paternus[1] also shows us: and in the ninth century, Pope Nicholas I. recognized that power in his answer to the inquiries from Bulgaria, in Cap. 39. Hence it follows, that these princes not only imposed impediments, but also sometimes dispensed with them, unopposed by the Church. There is a celebrated document on this subject, in which Theodoric, king of the Goths in Italy, grants leave to one of his vassals to contract marriage with his cousin. His councillor, the famous Cassiodorus, describes it at large in his seventh Book "*Variarum Epistolarum.*[2]" There is also a celebrated law of Recaredus, king of the Goths in Spain, in the seventh century, which is contained amongst the laws of the Visigoths, Book iii., Tit. 5, Ch. 1. p. 69. (edition of Lindenbrogius.) The same thing may be gathered from the numerous laws on the subject, contained in the Codes of Theodosius and Justinian,[3] and even to this day the Kings of France retain the power of annulling all marriages of Princes of the blood, made without the consent and approbation of the Sovereign; which was done, A.D. 1635, by King Louis XIII. in the case of his brother Gaston, Duke of Orleans and Chartres, who had married without the King's leave, Margaret of Lorraine. The body of Bishops and Theologians in the General Assembly held in that same year at Paris, having been consulted upon the subject, unanimously resolved that, assuming such to be the custom of the kingdom, his Majesty might use his royal power in setting aside that marriage, which was accordingly done, the King declaring it to be null and void.[4]

X. The best Theologians of other nations agree with those of France in following the angelical doctor both in the fourth of the sentences,[5] Dist. 34. Art. 1, and in his book *contra gentes*, Book iv., Chapter 78; where the holy doctor declares, that as Matrimony, in so far as it is a *sacrament*, is subject to the laws of the *Church*, in so far as it is a *natural and civil contract*, it is subject to the laws of the *secular prince*. He is followed, among others, by the four famous Dominicans (all theo-

[1] S. Ambros. Ep. 60. class. 1. vol. iii. p. 1103.
[2] Cassiod. tom. i. p. 123.
[3] Codex Theod. lib. iii. tit. 12.
[4] Launoy, tom. i. p. 2., p. 818.
[5] S. Thom. vol. vii. fol. 174. vers. Tom ix. p. 2., fol. 514. vers.

logians of the Council of Trent), Ambrosius Catharinus, Archbishop of Compsa, on the question "*de Clandestinis Matrimoniis*," printed at Rome in the year 1552; James Naclantus, Bishop of Chiozza, in his Sixteenth Treatise, which is "*de Irritandis Clandestinis Conjugiis*"; Dominic Soto,[1] on the fourth of the Sentences, Dist. 40, Art. 5; Peter Soto,[2] in his Treatise *de Matrimonio*, Lesson the fourth. All teach, that when CHRIST our LORD elevated Marriage to a Sacrament, He altered nothing concerning its matter, which is the natural and civil contract. So far as this contract is a Sacrament, the Church has power to impose various impediments diriment, and so far as it is a *civil* contract the secular Prince has also authority to impose impediments which annul it. The words with which Peter Soto concludes his discourse, are worthy of remark. This celebrated Thomist, confessor to the Emperor Charles V., and Theologian of Pope Pius IV., at the Council of Trent, says—"The Prelates of the Church ought not to take it ill, if the Secular Princes enact what seems necessary for the temporal peace, nor is there any reason why they should oppose themselves to them; but rather let them permit marriage to be regulated by human laws, since it is a human solemnity. Let them afterwards add, if it seems fit, what belongs to the good of religion—although the civil laws in all these matters have, certainly from the piety and good will of Princes, easily yielded to the Church, that no marriage be now considered unlawful which the Church does not judge to be so.[3]" Let us now pass on.

XI. In the Fifth book of the History of France, written by S. Gregory,[4] Archbishop of Tours, it is said, that about A.D. 577,

[1] *Dominic Soto*, a Spaniard, monk of the Order of S. Dominic, the son of a gardener, born in 1494. He refused the Bishopric of Segovia, and died in 1560. —TRANSL.

[2] *Peter Soto*, a Spaniard, monk of the Order of S. Dominic, of great reputation, was chosen by Philip, the husband of Mary of England, to assist in the restoration of the Romish faith in her Dominions. He died in 1563.—TRANSL.

[3] Non debent Prælati Ecclesiæ gravatè suscipere, si quod temporali paci vide rint necessarium, sæculares Principes statuant. Nec est cur illis se opponant, sed permittant potius Matrimonium legibus humanis ordinandum, cùm officium humanum sit: et addant postea ipsi, si videbitur, quod ad bonum religionis pertinet: quamquam civiles leges in his omnibus ex pietate certe et voluntate Principum facile cesserint Ecclesiæ, ut jam nullum censeatur Matrimonium illegitimum, quod Ecclesia tale non judicat.

[4] S. Greg. Turon. lib. v. cap. 19, p. 222.

Prætextatus, Archbishop of Rouen, granted a dispensation in the case of Prince Merovechus, to enable him to marry his uncle's widow, and that on account of this dispensation, the King Chilperic afterwards charged him with violating the Canons, saying—"Of what were you thinking, O Bishop, that you united my enemy Merovechus to his aunt, that is, to the widow of his uncle? Were you ignorant of what the Canons have enacted in this matter?[1]" Pretextatus was not so careless a man as to have granted such a dispensation, if similar dispensations had been unknown, or if he had considered that a simple Metropolitan was not a competent judge of such cases. The fact of Merovechus being a Prince, and a Prince hostile to the King, was probably the reason why Chilperic so strongly resented this dispensation or relaxation of the Canons, of which Pretextatus could not be ignorant.

XII. The thirty-four Fathers of the Council of Agde in France, collected from various provinces in the year 506, thus speak in the sixty-first Canon. "For incestuous marriages we reserve no pardon whatever, unless they have cured the adultery by separation. We declare that these incestuous persons are on no account to be considered as joined in marriage. If any one have married the widow of his brother, who is already almost his sister; if any brother have married the own sister of his wife; if any one have married his step-mother, or his cousin-german, or the widow or daughter of his uncle, or the children of his paternal uncle, or his step-daughter, or any one of his own blood: all these, both previously and by this constitution, we do not hesitate to call incestuous, and we command that they remain and pray among the Catechumens, until lawful satisfaction be made. Which unions we so prohibit for the present, that we do not annul what has been hitherto instituted. Those who are thus interdicted from unlawful marriages are at liberty to form a better union.[2]" The Fathers of

[1] Quid tibi visum est, ò Episcope, ut inimicum meum Merovechum cum amitâ suâ, id est, patrui sui uxore conjungeres? An ignarus eras, quæ pro hâc causâ Canonum statuta sanxissent?

[2] Labbe, tom. iv. p. 1393. De incestis conjunctionibus nihil prorsus veniæ reservamus, nisi cùm adulterium separatione sanaverint. Incestos verò nullo conjugii nomine deputandos hos esse censemus. Siquis relictam fratris, quæ pœnè prius soror extiterat, carnali conjunctione polluerit: siquis frater germanam uxoris acceperit: siquis novercam duxerit: siquis consobrinæ se sociaverit;

Agde mean to say, that they hold as actual *incest* (as was before held) marriage with sisters-in-law, and mothers-in-law, cousins and aunts, by consanguinity or affinity, and with any relations whatever, and that they command those who henceforth make such alliances to separate, and do penance among the catechumens. But they declare, that they do not dissolve or annul marriages *already contracted*, within the prohibited degrees. They give permission, instead, to persons so married, either to keep to their first contract, or to contract new alliances with persons not related to them. The immense number and frequency of marriages within the prohibited degrees, at that time, in France, perhaps gave occasion to this arrangement on the part of the Fathers of Agde, which strongly demonstrates the great power and jurisdiction which the Bishops still exercised in the sixth century.

The Fathers of the Council of Epaone, in France, held A.D. 517, in the thirtieth Canon, renewed almost in the same words this Canon of Agde, against persons marrying within the forbidden degrees; but out of compassion to the multitudes who before that time had contracted marriage with cousins and sisters-in-law, they granted a dispensation in their case in the same terms, allowing them to keep their wives though related to them, or to marry others not so related. "But as we prohibit all such marriages from this time forth, so we do not annul those which have already taken place; nevertheless, those who are forbidden to make an unlawful union, shall have liberty to make a better marriage.[1]" The number of Bishops in this Council was twenty-five, collected from different Provinces.

That the meaning of these words of the Council of Agde, "*ut ea quæ sunt hactenus instituta non dissolvamus*": and

siquis relictæ vel filiæ avunculi misceatur: aut patrui filiæ, vet privignæ suæ: aut qui ex propriâ consanguinitate aliquam, aut quam consanguineus habuit, concubitu polluerit aut duxerit uxorem. Quos omnes et olim, atque sub hâc constitutione incestos esse non dubitamus, et inter catechumenos usque ad legitimam satisfactionem manere et orare præcipimus. Quod ita præsenti tempore prohibemus, ut ea quæ sunt hactenus instituta non dissolvamus. Sanè quibus conjunctio illicita interdicitur, habebunt ineundi melioris conjugii libertatem.

[1] Labbe, tom. iv. p. 1579. Quod ut à præsenti tempore prohibemus, ita ea qua sunt anterius instituta non solvimus. Sane quibus conjunctio illicita interdicitur, habebunt ineundi melioris conjugii libertatem.

of these of Epaone, "*ita ea quæ sunt anterius instituta non solvimus,*" is that which I have assigned to them, appears to me to be a matter which does not admit of the smallest doubt, because if the whole of the context be considered, there are only *two* meanings which can, grammatically, be drawn from these Canons—First: to understand the words "*quæ sunt hactenus,*" or "*anterius instituta,*" of the *decrees* made anterior to the two councils, which had long before prohibited marriage between kindred. In which case, the meaning of the Fathers of Agde would be, that they now prohibited such marriages, without intending to abrogate what had been already ordered by other Councils on the same subject. But this meaning is altogether improbable, and unsuitable; because, in the first place, the Fathers of Agde a little before declare, that marriages between kindred had been already forbidden as incestuous by previous Canons, "*quas omnes et olim, atque sub hâc constitutione incestos esse non dubitamus,*" and in the second place, because, the fact of their then prohibiting such marriages, plainly shows that they could not at the very same time intend to abrogate the Canons which had already previously forbidden such marriages. For, of course, a law prohibiting such and such alliances, does not *dissolve*, but rather *confirms* and ratifies other laws which had previously prohibited them. Hence it follows, that the words quoted from the Councils of Agde and Epaone can only bear the second meaning, which we have already stated, viz. that they so prohibited *for the present time*, or, as the Canon of Epaone expresses it, *from the present time*, the marriage of relations, that it is not their purpose to annul those already made; which is plainly confirmed, not only by the verbs "*solvere*" and "*dissolvere,*" which the Fathers use, and which more properly refer to marriage than to previous decrees, but likewise by the concluding clause of both Canons. "*Sane quibus conjunctio illicita interdicitur, habebunt ineundi melioris conjugii libertatem.*" Which the Fathers no doubt added, in order that persons who had contracted marriage within the prohibited degrees, might not fancy that they had no liberty to dissolve them and marry again lawfully.

I think moreover, that no one need be surprised that the Fathers of these Councils granted dispensations within the

degrees prohibited by God. Leviticus xviii. (where the Jews are expressly forbidden to marry their mothers-in-law, sisters-in-law, step-daughters, &c.) because Cardinal Clement Moniliano, referred to by Launoy,[1] with many others, had already declared, that this law of Leviticus, with the others promulgated by Moses, was abrogated by the Law of Grace, in all things not contained in the law of nature: and that consequently it was expedient that the Church and the secular powers should renew it in the case of Matrimony, in order that the faithful might not contract marriage within those degrees. It is then certain, that in granting dispensations within the degrees prohibited in Leviticus, the Fathers of Agde and Epaone did not violate the Divine law, so much as the Roman Pontiffs at the present time, who permit the marriages of brothers and sisters-in-law, and of uncles with nieces.

But what removes all doubt with regard to the Canons of Agde and Epaone, and affords the best example in this matter that could be cited, is the resolution of the twenty-five Bishops who were present at the Third Council of Orleans. In the tenth Canon they renew the same impediments of consanguinity and affinity which had already been established at Agde and Epaone. At the same time, availing themselves of the authority given them by Christ, they grant dispensations in the cases of two classes of persons, whose marriages with mothers-in-law, sisters-in-law, aunts and cousins, they permit. The subjects of this dispensation are, first, such as being newly baptized, had married relations; and secondly, persons who, though baptized some time before, were ignorant of the prohibition of the Canons. "In the case of persons very recently baptized, or who were ignorant of the statutes of the Fathers, we deem that some allowance should be made for the newness of their conversion and faith, so that such marriages contracted by them should not be dissolved; but that in future, what has been forbidden in former Canons concerning incestuous unions, be observed.[2]"

[1] Launoy, tom. i. p. 2, p. 735.

[2] Labbe, tom. v. p. 298. De incestis conjunctionibus ita quæ sunt statuta serventur, ut his qui aut modo ad baptismum veniunt, aut quibus Patrum statuta in notitiam antea non venerunt, ita pro novitate conversionis ac fidei suæ credidi-

Nothing further can be desired concerning the great power of the Bishops; they impose impediments: they dispense with them, even so far as to sanction marriages with step-mothers, sisters-in-law, and aunts by affinity; alliances ever the most strongly forbidden by the civil law.

XIII. But more examples of this authority of the Bishops remain. In the year 895, a Council was held at Tribur by twenty-two Bishops. In Canon 41, these Fathers granted a dispensation to a brother to marry his sister-in-law, who had committed adultery with him, during her husband's life, upon condition of their doing penance for their sin. "Let the Bishop taking into consideration their weakness of mind, permit them to marry after penance, if they find it necessary.[1]"

If we may believe Thomassin, the Bishops retained this power of dispensing so late as the eleventh century: at least it appears from the 34th letter of Hildebert,[2] Archbishop of Tours, that in this century the French Bishops of the province of Tours granted such a dispensation, and that in writing, in order that a daughter of Walter de Mayenne might marry the Count de Mortaigne, her near relation, within the prohibited degrees, hoping that by means of this alliance the discords between the two families might cease. "Moreover, Walter added that you and your fellow Bishops had confirmed it to him in writing that the pollution of consanguinity is to be borne for the sake of peace and quiet.[3]"

Hildebert on his part refused his consent not for want of power, but on account of the rigorous discipline still observed by the most zealous Prelates in those ages.

XIV. Having now demonstrated by so many facts and examples the dispensing powers of the Bishops in impediments to

mus consulendum, ut contracta hucusque hujusmodi conjugia non solvantur; sed in futurum quod de incestis conjunctionibus in anterioribus canonibus interdictum est, observetur.

[1] Labbe, tom. ix. p. 461. Episcopus consideratâ mentis eorum imbecillitate, post pœnitentiam suâ institutione peractam, si se continere non possint, legitimo consoletur matrimonio.

[2] Thomass. pt. ii. book iii. ch. 27, No. 5. and ch. 29, No. 10.

[3] Hildeberti Ep. 4. Addidit præterea [Gauterius,] vos vestrosque provinciales ei confirmasse scripto, compendio pacis et quietis tolerandum consanguinitatis piaculum.

matrimony, and any other Canonical laws, where they have not been deprived of this authority by any legitimate enactment or reservation to the contrary: it remains to answer two arguments on which Prosper Fagnanus lays great weight, a man altogether prejudiced by his veneration for the Papal chair, to which alone he would give the right of regulating the power of the Bishops. The first is taken from Cap. "*Dilectus*," 15, "*De temporibus Ordinationum*," where Pope Honorius III. punishes by suspension a certain Bishop, who had conferred on the same day the three sacred Orders on a Canon. And the reason which the Pope gives is that "it is by no means allowed him by the Canon to grant such dispensation.[1]" Whence Fagnanus draws the general conclusion, that a Bishop may not dispense with the laws of his superior, unless it be expressly permitted to him by the laws.

XV. First, Gibert has already declared that this Cap. "*Dilectus*" of Honorius III., is of later date, than the Cap. "*Innotuit*," 3; "*De eo qui furtive ordinem suscepit*," of Celestine III., and the Cap. "*Litteras*," 13, "*De Temporib. Ordinat.*" of Innocent III., from which it appears that from the time of the predecessors of Honorius, dispensations of this kind have been reserved to the Apostolic See. And that Honorius, in saying "since it is by no means allowed him by the Canon to grant such a dispensation," did not mean that to enable a Bishop to dispense with any Canon, it was absolutely necessary that the Canon itself should expressly give him the permission to do so; but he intended to say, that this case having been already reserved by his predecessors, the Bishop had no longer the power of dispensing in it: so that these words "*Cum à Canone minime sit permissa*," mean the same as if the Pope had said "*Cum à Canone sit vetita.*" In the second place, let us allow that this saying of Honorius is an impregnable axiom to such men as Fagnanus, who as a pure Canonist, and a Canonist of the Papal chair, is, (with the other ultra-Montanes) accustomed to allege, and follow as an unalterable rule, any passage in the Decretals. But it is not so, with those Theologians who allow such parts only of the Decretals to be infallible

[1] Fagnanus in cap. *Dilect.* De Tempor. Ordin. Cùm illi hujusmodi dispensatio à Canone minimè sit permissa.

rules, as are founded on Scripture or Tradition. And the axiom of Honorius taken in the sense which Fagnanus desires, is very far from fulfilling these conditions. This appears the more clearly, since the great Canus has already warned us that in the Decretals of the Pope, "*aliud est intentio conclusioque Decreti, aliud ratio et causa.*[1]"

XVI. The second argument has more plausibility, but it is only *plausibility*—albeit it is the Achilles of our adversaries. It amounts to this: that for a Bishop to dispense with the laws of the Pope, or of a General Council, would be to make himself superior to the Pope or General Council, which cannot be admitted amongst Catholics. But they who support our view of the matter have already asserted, that the Bishop by dispensing with the law of the Council or Pope, does not so make himself superior to the Council or Pope; but that he simply *interprets* the law of the superior, according as the necessity or benefit of his people require it. For, as the Scriptures and the Holy Fathers teach us, the basis and foundation of all Ecclesiastical law is the Divine law of charity to our neighbours: no law against which can be just or binding: but rather, all human laws, be they of Pope or Council, must be subservient to, and yield to that primary one—which is the same as S. Paul says to Timothy,[2] "The end of the commandment is charity," and S. Augustine, "The prohibition is general, 'thou shalt not covet' —the command is general, 'thou shalt love.'" And S. Bernard, "If, perchance, certain Canons shall at any time appear at variance with charity, in the things in which we are able to see that this is the case, it is also entrusted to us to provide for such emergencies. Is it not clearly most just that those things which were instituted for the sake of charity, may also for the sake of charity, when it shall seem expedient, be either omitted or suspended, or changed to something more suitable? Let such things therefore hold a firm and fixed unchangeableness even among Prelates, but only so far as they are consonant with charity.[3]"

[1] Canus, *de locis Theolog.* lib. vi. cap. 8.

[2] 1 Tim. i. 5. Finis præcepti est caritas.

[3] S. Bernard de Præcepto et Dispensatione, cap. 2. tom. iv. p. 74. Si contraria caritati forte aliquando visa fuerint, his duntaxat quibus hoc posse videre datum est, et providere creditum est: Nonne justissimum esse liquet, ut quæ pro

Since the precept to assist our neighbours in their need is, before all other precepts, inviolable and universal, it follows that whensoever this necessity occurs, every human law and constitution ought to give way to the supreme law of charity; and that all such human laws, to be just and binding, must always contain within them an exception in favour of the necessity or advantage of the people, so that whenever that necessity or advantage requires it, the force of such human laws ceases by natural and Divine right. Hence Pope Alexander III., in Cap. "*Cum teneamur, De Præbendis,* allows the Bishops to refrain from executing the Rescripts of the Apostolic See, whenever scandals or the spiritual ruin of their neighbours were likely to arise from the execution. "If the thing cannot be provided for without scandal, we take it patiently if on that account you shall consider it right not to execute our mandate.[1]" Upon this subject, Covarruvias on the Rule *Peccatum*, p. i. No. 7., and Peter de Marca, Book iii. *de Concordiâ*, Ch. xv. No. 8, are worth reading.

But as it is not right that all men indiscriminately should be judges of this exemption, but those only whom CHRIST gave as Pastors to His Church, the Pope and the Bishops being (as in truth they are) by Divine right the legitimate Pastors of the Church, to them it appertains by Divine right to consider the necessities of the people, and by means of dispensations to declare the cases in which the laws are no longer binding. Not that, in dispensing with them, the Pope goes counter to the Laws of General Councils, or the Bishops to those of the Pope, as though they were *superior* to the law, but in doing so, they *interpret* the laws according to the circumstances of each case, which may well consist with the duty of inferiors.

Because, as Pope S. Symmachus teaches in his letter to Avitus Archbishop of Vienne, "Whatever is done beyond the law, so long as it be done for sufficient cause, does not break the law, which is injured only by obstinacy and a contempt for anti-

caritate inventa fuerunt, pro caritate quoque ubi expedire videbitur, vel omittantur, vel intermittantur, vel in aliud fortè commodius demutentur? Teneant ergo fixam firmamque immobilitatem, etiam apud Prælatos . . . sed quatenus caritati deserviunt.

[1] Si non potest ei sine scandalo provideri, æquanimiter sustinemus, si pro eo mandatum nostrum non duxeris exequendum.

quity.[1]" This doctrine is clearly seen whenever the Sovereign Pontiff dispenses, as, for example, with vows or oaths, which, past all controversy, are matters of Divine law. All Theologians and Canonists whatever, of any name, agree that the Pope does not execute such dispensations as being *superior* to, or Lord over the Divine law, (for this is attributed to the Pope by some old Canonists only, whom no wise or learned man would make any account of,) but as the *Interpreter*[2] of such Divine law, declaring that in such and such particular circumstances, it is not obligatory.

XVII. Another example will serve to show that to dispense with a law, is not the same as to arrogate superiority to the law. According to the definition of two General Councils, viz., Constance, Session 5, and Basle, Session 2, followed by the whole Gallican Church, the Universities of Paris, Cologne, Erfurdt, Vienna, and Cracow, the five Cardinals, Peter d'Ailly,[3] a Frenchman, Francis Zabarella[4] and Nicholas Tudeschi,[5] Italians, Nicholas de Cusa,[6] a German, and Adrian Florisz,[7] a Hollander, also by Alphonso Tostado and other Doctors, whom we shall mention further on in the Fifth Principle;—according to this definition, the Sovereign Pontiff is, by Divine right, inferior to a General Council, representing the whole Church Catholic, and, as inferior, is subject to the laws of the same Council. But notwithstanding this, all the above doctors, with the Council of Basle and the Gallican Church, confess and allow that the Pope

[1] Spicilegium D'Achery, tom. iii. p. 307. Quod fit præter regulam, modo sit ex justâ causâ, non infringit regulam, quam sola pervicacia et antiquitatis contemptus lædit.

[2] Conv. *de Matrimonio*, p. ii. cap. 4, § 9.

[3] *Peter d'Ailly*, Cardinal and Bishop of Cambrai, born in 1350.—See Bayle's Crit. Dict.—TRANSL.

[4] *Francis Zabarella*, called the Cardinal of Florence, born at Padua, died in 1417. Amongst other things he wrote six volumes on the Decretals and one on the Councils.—TRANSL.

[5] *Nicholas Tudeschi*, called Nicholas of Sicily, the Abbat Nicholas, or the *Panormitan*, was made Cardinal by the Antipope in 1440. He was present at the Council of Basle, and wrote a defence of that Council.—TRANSL.

[6] *Nicholas de Cusa* was born at Cusa on the Moselle, in 1401.—TRANSL.

[7] *Adrian Florisz*, or Adrian the son of Florent, (afterwards Pope Adrian VI.) born at Utrecht in 1459. When Cardinal he acted as joint Regent of Spain with Cardinal Ximenes.—TRANSL.

can *dispense* with the Canons and Decrees of Discipline enacted by General Councils, whenever the need or advantage of the Faithful throughout the Church requires it. Not because the Pope is superior to General Councils (for all of them hold him to be inferior), but because the Councils themselves tacitly grant this permission to him as Prince of the Church; and also because dispensations being necessary in the Church, and it not being easy at all times to have recourse to General Councils, (which were seldom celebrated and always with difficulty) it was right that the Faithful should have in the Pope a perpetual and supreme dispenser, who, as interpreter of the Canons, might mitigate (as occasion required) the rigour of certain of the Canons. The Fathers at Basle in the Synodicon of the year 1435, say, when speaking of the Pope, "The Statutes of the Council, however, by no means take from the Pope the power of moderating and dispensing, when utility or necessity demand it, according to time and place, and circumstances and persons, and of exercising the *epikeia* of the Supreme Pontiff, which cannot be taken from him.[1]" Again, John Gerson; "The exception made in favour of the Papal authority is understood, according as the occurring need or evident advantage requires, at times when recourse cannot be had to a General Council.[2]" See also Almaine,[3] Ch. 12, on the decisions of Occam; Natalis Alexander in his History of the 15th and 16th centuries, Dissert. viii. Art. 4, No. 16; Bossuet[4] in the "Defence of the Declaration of France," Part ii. Book xi. Chapter xvi; and Dupin in his work on the same subject, p. 660, in the 8vo. edition.

What has been said of the Pope with respect to General Councils may also, in its degree, be said of Bishops with respect to the Pope; that as the Pope for a grave and sufficient reason, may dispense with the Decrees of a General Council without

[1] Labbe, tom. ix. p. 1155. Per concilium autem statuta in nullo derogant suæ potestati, quin pro tempore, loco, causisque et personis, utilitate vel necessitate suadente, moderari dispensarique possit, atque uti summi Pontificis *epikeia*, quæ ab eo auferri nequit.

[2] Intelligitur Papalis auctoritatis exceptio facta, prout occurrens necessitas vel evidens utilitas postulat, ubi pro tunc recursus ad Generale Concilium non patebat.

[3] Almaine in Gerson, tom. ii. at the end. *James Almaine*, a native of Sens; he lived in the beginning of the 16th century, and was a follower of Occam.—TRANSL.

[4] Bossuet, tom. ii. p. 139.

its thence following that the Pope is superior to the General Council: so also may the Bishops for the same cause, dispense with the laws of the Pope without thereby showing themselves to be superior to the Pope. Because the Bishop is, with respect to his Diocese, what the Pope is with respect to the Universal Church. Cardinal Cusa writes, "It cannot by any means be denied that the Pope has power to dispense with any Statute whatever in cases of necessity or evident utility.[1] Archidiaconus says, in Chap. *Sanctorum*, 70 Dist., that the Bishop can do this: who, amongst other things, declares that any Canon forbidding this would be unreasonable. And he gives examples where Bishops have for such causes dispensed with the decrees both of Provincial and Universal Councils. But the Pope on account of his personal prerogative can dispense beyond this. . . . . And from these things it appears that the power of superintendence which, for the good of the Church, is vested in the Pope, is not properly above the Canons, but it declares in any particular case, that the Canons, for reasonable causes, do not apply, so that a Dispensation is not so properly a relaxation of the law as a declaration of it, &c.[2]"

Cusa had already said in Chap. xiii.: "If you maintain more than this of the dispensing power of the Pope with regard to the Canons by arguing from it the power of *enacting*, you conclude nothing. For the Bishop also dispenses with the Canons, nor does the dispensation prejudice the Canons.[3]" Whence Gibert concludes, that "It seems absurd that a Bishop should not be permitted to grant dispensations except when it is

[1] Cusa, *de Conc. Cath.*, book ii., chap. xx.

[2] Nullo modo negari potest, quin propter necessitatem aut evidentem utilitatem, Papa dispensare possit contra quodcunque statutum. Imo Archidiaconus dicit, Episcopum hoc posse. Qui inter alia dicit; quod si Canon aliquis hoc prohiberit, irrationabilis fieret. Et ponit exempla, ubi Episcopi contra Concilia tam provincialia quam universalia, ex illis causis dispensarent. Papa autem ultra hoc propter prærogativam personæ dispensare potest de quo per eum, &c. Et ex istis patet, quod potestas superintendentiæ quæ est ad utilitatem Ecclesiæ in Papâ non est propriè supra Canones. Sed ipsa declarat, Canones in occurrenti casu propter rationabiles causas locum non habere. Et sic Dispensatio non est propriè juris relaxatio, sed declaratio, &c.

[3] Si dicis ultra de potestate dispensativâ Papæ in Canonibus, ex eo arguendo potestatem statuendi, nihil concludis. Quia etiam Episcopus dispensat in Canonibus. Nec facit dispensatio Canonibus præjudicium.

expressly allowed him by the Canon, because the case of just dispensation is understood to be excepted in every law; for the dispensation in order to be *just* ought to be necessary, or at least useful, for the public good; now the public necessity or advantage are always exceptions in a law."[1]

The Pope S. Symmachus, in the Epistle cited a short time back, says, "Although the Statutes of the Fathers are to be kept with diligent observance and observant diligence; nevertheless for a good end, somewhat of the rigour of the law may be relaxed, which the law itself would have provided against had it foreseen the case. And it would frequently be cruel to insist upon the law when the observation of it seems to be prejudicial to the Church; for laws are enacted in order that they may be beneficial and not hurtful.[2]"

XIX. It is certain that the Laws of the Church now are not of a different nature to what they were in the early ages; and yet we shall find in Sozomen[3] that S. Spiridion,[4] the great Bishop of Cyprus, in the fourth century, having no other food to offer to a guest in Lent, ordered a dish of pork to be placed upon his table, of which the Saint himself also partook, judging that the law of Charity ought to take the place of every other law. Upon the same ground, when in this present year, 1766, there was a great scarcity of fish in France, the Bishop of Limoges issued a dispensation to his people permitting them to eat meat thrice a week, during the Lent just past, as appeared in the Gazettes of the time.

[1] Absurdum videtur, ut Episcopis dispensare non liceat, nisi quando à Canone sibi expresse permittitur. Quia casus dispensationis justæ omni in lege subintelligitur exceptus: quia dispensatio ut si justa, debet esse publico bono necessaria vel saltem utilis: necessitas autem vel utilitas publica in lege semper excipiuntur. —Gibert, tom. ii. tit. 7, p. 102.

[2] Quamvis à Patribus statuta diligenti observatione et observanti diligentia sint custodienda: nihilominus propter aliquod bonum de rigore legis aliquid relaxatur, quod et ipsa lex cavisset, si prævidisset; et sæpe crudele esset insistere legi, cùm observantia ejus esse præjudicabilis Ecclesiæ videtur: quoniam leges eâ intentione latæ sunt, ut proficiant, non noceant.

[3] Sozomen, book i. chap. xi.

[4] S. Spiridion was Bishop of Tremithus in Cyprus, about A.D. 325.—TRANSL.

THE FOURTH PRINCIPLE.

IN THE WHOLE BODY OF THE CANON LAW, AND EVEN IN THE COUNCIL OF TRENT, THERE IS NOT A PASSAGE WHICH DENIES TO, OR TAKES FROM, THE BISHOPS, THE POWER OF DISPENSING WITH IMPEDIMENTS TO MARRIAGE: THESE AND OTHER DISPENSATIONS WERE GRADUALLY RESERVED TO THE APOSTOLIC SEE BY *custom*, OR BY THE *sufferance of the Bishops*.

AUTHORITIES FROM THE COUNCIL OF TRIBUR, S. FULBERT OF CHARTRES, HILDEBERT OF MANS, AND S. BERNARD OF CLAIRVAULX, CONCERNING THIS SUFFERANCE ON THE PART OF THE BISHOPS.

COURAGE OF S. DUNSTAN OF CANTERBURY, ROBERT OF LINCOLN, AND OF ANOTHER, BISHOP OF ANGOULEME.—OPINION OF REBUFFI CONCERNING THE ORIGIN OF RESERVES.

PROOFS.

I. In proof of this Principle, I bring forward Gibert, a modern and noted Canonist of France, who in his Treatise, *de Ecclesiâ*, Tit. vii., *de Prælatis*, writes thus:—"Reservations of Marriage dispensations in favour of the Apostolic See are no where read of in the Corpus Juris nor in the Council of Trent."[1]

[1] Factæ Reservationes circa Dispensationes matrimoniales in favorem Sedis Apostolicæ, nullæ leguntur in Corpore Juris, nec in Concilio Tridentino.—Gibert, tom. ii. p. 149.

Again, Barthelius, also a modern, and not less celebrated, Canonist of Germany, in his "Additions to the Canon Law," Book i. Tit. 33, says thus: "Where neither the written law nor the law of custom deprives the Bishop of the power he possesses it by right. Some few Canons we possess which take from them this power, such as of dispensing with age; but we have none such in impediments to marriage: they are reserved by mere custom. For when through a tenderness of conscience, the Bishops in the twelfth century often referred to the Pope (not because they entertained any doubt concerning their own power, but because they would seek his advice, since as yet they were more strict in insisting upon the observance of the Canons), by custom the Pontiff reserved these impediments to himself.[1]"

I also offer Van Espen, another modern and learned Canonist of Flanders, who, Part ii. Tit. 14, Chap. i., writes thus:— "Who they are who possess the authority of dispensing with the impediments to marriage is not determined either in the Canons or in the Decretals of Gregory IX., nor is this authority in any general decree alleged to be taken from the Bishops and reserved to the Pope. The custom however has prevailed, that in matters relating to the removal of impediments, the Pontiff alone shall have power to dispense.[2]" Also Gerbais, a noted theologian of the Sorbonne, in his Treatise "on the power of the Church and of Princes concerning impediments to Marriage," originally written in French. "There is not a passage in the Canon Law which reserves the power of dispensing in the prohibited degrees to the Pope alone, to the exclusion of the Bishops. And in truth what reason can be assigned why the Bishops should not be able

[1] Ubi vel jus scriptum vel consuetudinarium non adimit Episcopo potestatem, illam in regulâ habet. Paucos habemus Canones, in quibus potestas illis adempta, ut in dispensandâ ætate: in impedimentis matrimonii nullos habemus, sed ex merâ consuetudine sunt reservata. Cum enim ob teneram conscientiam Episcopi sæculo XII. desuper sæpiùs referrent ad Pontificem, non quod de suâ potestate dubitarent, sed quod ejus inquirerent Consilium, quia magis adhuc insistebant observantiæ Canonum: consuetudine sibi hæc impedimenta Pontifex reservavit.— Barthel. p. 137.

[2] Quibus dispensandi auctoritates super impedimentis matrimonii competat, nec in Canonibus, nec in Decretalibus Gregorii IX. determinatur: neque legitur aliquo decreto generali auctoritas hæc Episcopis adempta, et Pontifici reservata. At consuetudine tandem invaluit, ut si agatur de impedimentis dirimentibus, soli Pontifici dispensatio competat.—Van Espen, tom. i. p. 414.

to dispense in such cases? Or why should this power be disputed with them, at least when the parties are poor, the distance of the places excessive, or the cases urgent?[1]" Further on he writes, "There are no Ecclesiastical Laws which reserve the dispensation of impediments diriment to the Pope alone, or which determine precisely to whom the dispensing power belongs, and thus we are of necessity obliged to refer to the use and custom which has prevailed in the Churches.[2]"

II. Lastly I bring forward Thomassin, a Father of the Congregation of the Oratory at Paris, and without dispute the man the best versed in Ecclesiastical History whom France, and perhaps the whole Church, has seen during the last century. In the second part of his incomparable work, "*de Beneficiis*," Book iii., from Chap. xxiv. to Chap. xxviii., Thomassin shows two things:—(1.) That for ten or eleven centuries the Bishops possessed the power of granting all kinds of dispensations. In Chap. xxvi., No. 1, which treats of the dispensations of the eighth, ninth, and tenth centuries, he says, "That same doctrine of dispensations will appear in the times of Charlemagne and his family after him, viz., that the Bishops exercised their original power in dispensing, both individually and in Synod.[3]" Afterwards in No. 16, he notices that at the time when SS. Tarasius and Nicephorus were Archbishops of Constantinople, no one doubted their competency to judge all causes and matrimonial dispensations.

In Chap. xxvii., No. 1, which treats of dispensations during the eleventh and twelfth centuries, he says, "We have proposed to ourselves two things to be fully illustrated and proved in this place:—the first is the dispensing power which in some sort is grafted in and concrete to the Episcopal dignity.[4]" Then in No. 3, he declares that even in the eleventh century the Grandees and Bishops of Poland felt persuaded that the Pope's dispensation was

[1] Gerbais, p. 412. [2] Ibid., p. 532.

[3] Constabit illa eadem dispensationum doctrina temporibus Caroli Magni et regnatricis ejus familiæ, usos videlicet esse in dispensando prisca suâ potestate Episcopos, tum singulos, tum synodice congregatos.

[4] Duo quædam proposuimus, quæ nobis hic operosius et illustranda sint et munienda. Primum caput est ipsa dispensandi potestas, quæ inserta et concreta quodammodo est Episcopali dignitati.

not required to enable Prince Casimir to marry, although he had professed the monastic life and was already in Deacon's Orders, in the order of Cluny, but that it was sufficient to have that of the Prelates. And in No. 6, he remarks, that Edward, King of England, having made a vow to go to Rome, although his Bishops had the power to dispense with this vow, the King sought the dispensation of Pope Leo IX. He shows secondly that the cause of these and other dispensations being reserved to the Apostolic See, was the consent of the Bishops, who, either through the respect and deference which all paid to the Supreme Pastor, or because by referring the parties interested to Rome they thought the better to secure the strict observance of the Canons, little by little lost the power which they possessed, and reserved to the Apostolic See both matrimonial dispensations and those relating to vows, &c. In Chap. xxvi. No. 1, he writes :—"Emperors, Kings, and Bishops, by the instinct and in the spirit of Christian piety, more religiously and earnestly, as time went on, deemed that they ought to consult with CHRIST'S Vicar upon earth and the Successor of S. Peter, and thus, without intending it and incautiously, they themselves became the authors of this innovation in sacred discipline.[1]" In Chap. xxvii. No. 2, after proving by the example of the Council of Limoges, A.D. 1032, how the Bishops of their own accord referred to the Pope the most difficult cases in regard to absolutions or dispensations, he concludes thus :—"As for many other reasons and causes, so especially on this account, the custom of granting dispensations, which the Bishops themselves of their own accord abstained from, fell into the hands of the Roman Pontiff.[2]"

And in No. 5, after relating, on the authority of Ivo of Chartres, how a certain Bishop consulted the Apostolic See upon the dispensation to one of his people who had contracted marriage within the degrees prohibited, he proceeds thus :—"That constancy on the part of the Pontiffs in preserving the rigid execu-

[1] Eo quasi instinctu afflatuque Christianæ pietatis, Imperatores, Reges, Episcopi religiosiùs in dies et ambitiosiùs colendum sibi existimarent CHRISTI in terris Vicarium, Petrique Successorem : atque ita ipsimet inopini et imprudentes hujus in Disciplinâ sacrâ innovationis auctores erant.

[2] Cùm multis aliis rationibus et causis, tum hæc potissimum, defluxit in manus Romani Pontificis usus concedendarum dispensationum, quo ultro se abstinebant Episcopi.

tion of the Canons, led other, more flexible Prelates, of their own accord, to prefer that dispensations should in future be considered by the Pontiff, even those which they had themselves hitherto granted.[1]" And in No. 12, the same Thomassin conjectures that it was in the eleventh century that the doctrine began to be introduced that Bishops could not grant dispensations in regard to the Canons of General Councils and the Laws of the Roman Pontiffs. Lastly, he says in Chap. xxviii. No. 1: —"The practice of granting dispensations was at first in the power of the Bishops; in lapse of time by far the greater part of them was claimed by the Roman See alone, either because the Bishops themselves were willing that it should be so, or for some other blameless cause, the Popes grasping at nothing of the sort for themselves.[2]"

III. As a farther proof that the Apostolical Reservations had their origin in the consent of the Bishops, we find in the Council of London, A.D. 1143, that "The Bishop of Winchester held a Council at London, in which it was enacted, that no person who had laid violent hands upon a Clerk should be absolved by any one except the Pope himself and in his presence.[3]" We read also in the life of S. Laurence, Archbishop of Dublin, about the year 1179, that "in the case of Subdeacons as well as Deacons and Priests convicted of incontinence, although as Archbishop he possessed the power, yet he refused to absolve them, and sent them to Rome for absolution by the Supreme Pontiff.[4]"

[1] Ea Pontificum constantia tuendi Canonum rigoris reliquos Episcopos suâ sponte flexibiliores alliciebat, ut in posterium mallent à Pontifice trutinari dispensationes, eas etiam quas ipsi hactenus concessissent.

[2] Penes Episcopos primum fuisse usum dispensationum largiendarum. Lapsu temporis partem earum longe maximam uni Apostolicæ Sedi vindicatam esse, vel volentibus ipsis Episcopis, vel aliis incidentibus causis innoxiis, nihil ejusmodi ad se trahentibus Pontificibus.

[3] Tenuit Vintonensis Episcopus Concilium apud Londinium, clericis pro tempore necessarium. In quo sancitum est, ne aliquis qui clerico violenter manus injecerit, ab aliquo possit absolvi, quàm ab ipso Papa et in præsentiâ ipsius.—Labbe, tom. x. p. 1033.

[4] Omnes tam Sudiaconos, quàm Diaconos vel Presbyteros, si incontinentiæ convicti essent, (licet tamquam Archiepiscopus posset,) tamen nolebat absolvere, sed ad Romanam Ecclesiam à Summo Pontifice absolvendos destinabat.—Baronius, A.D. 1179, No. 14.

We read in an Epistle of Ivo of Chartres,[1] how he himself, after having imposed Canonical penance on a man who had stricken a monk, referred him to the Chief Pontiff, saying that considering the great crime of the penitent, he reserved his absolution to the Apostolic See. "Reserving this indulgence to the Apostolical lenity, we have directed him to the threshold of the Apostles.[2]" We read in the Council of Rouen, A.D. 1189, Canon 26, which refers to those who take false oaths to the prejudice of the Church:—"For their greater confusion let them be sent to the Apostolic See.[3]" We read thus in a Council of England, held in 1138, Canon 7, with respect to Clerks who were ordained in another Diocese without the licence of their own Bishop:—"We forbid him to execute the functions of his Order, and let his full restoration be reserved to the Roman Pontiff alone, unless he shall have assumed the Religious habit.[4]"

IV. On the other hand, in the thirteenth century, when the Roman Pontiffs were already beginning to reserve to themselves dispensations in cases of irregularity arising *defectu natalium*, and in others, the Bishops of England testified[5] and protested in their Synodical Constitutions, that they possessed the power to dispense in these cases, which Thomassin proves from two Councils of that period, in which the Bishops say "*cum talibus dispensare possumus.*[6]" S. Dunstan, Archbishop of Canterbury, being ordered by the Pope to absolve one of his people whom that Saint had excommunicated on account of incest, boldly replied to the Pope that he would obey his command when the offender had rendered himself deserving of absolution by performing public penance. "When I shall see him doing penance for his fault, I will willingly obey the command of the

[1] Ep. S. Ivo, 160.

[2] Reservantes itaque hanc indulgentiam Apostolicæ moderationi, ad Apostolorum eum limina direximus, &c.

[3] Ad eorum majorem confusionem ad Sedem Apostolicam transmittantur.—Colet. tom. xiii. p. 682.

[4] A susceptorum ordinum officiis inhibemus, solique Romano Pontifici eorundum plenaria restitutio reservetur, nisi religionis susceperint habituere.—Labbe, tom. x. p. 995.

[5] In the Council of Salisbury, Canon 2, held in 1217.

[6] Thomass., Part 2, book iii., chap. xxviii., No. 8.

Lord Pope.[1]" A Bishop of Angoulême in France, about the same time, made a like answer to the Pope in a similar case, as is related in the Acts of the Council of Limoges, A.D. 1032:—"On the contrary, what I ought to demand from the Apostolic See, the Apostolic Father demands from me; I cannot believe that this command has come from him; and it avails you nothing. Until you accept penance at my hand or at those of the Archdeacon of the See, at my order, remain excommunicated. And he cast him out of the Church.[2]"

Robert, Bishop of Lincoln, (a city of England,) a very holy and learned man of the thirteenth century, being ordered by Pope Innocent IV., to give a Prebendal stall in his cathedral to a certain Ecclesiastic, and perceiving the established Episcopal rights to be violated by this new kind of preferment, openly protested that he neither would nor ought to obey the Letter of the Pope, saying, "Wherefore, I, with all filial obedience, obey not, oppose and rebel against the contents of the aforesaid letter[3]"; giving this as his reason:—"Briefly summing up, I maintain that the sanctity of the Apostolic See can only do that which is for edification and not for destruction, but these preferments are not for edification but tend to the most manifest destruction.[4]" So writes Matthew Paris in the year 1253. And the same author, who was a contemporary, describes, in 1226, another document, by which it appears that when Pope Gregory IX. claimed to have two Prebends in each cathedral reserved for the disposal of the Apostolic See, the French Prelates at Bourges protested against it in the presence of the Apostolic Legate, and exclaimed that they would by no means consent to such reservations, unless it should appear clearly that the other Prelates or

[1] Equidem cum illum sui delicti pœnitudinem agere videro, præceptis Domini Papæ libens parebo.

[2] Vice versâ quod ego postulare debueram ab Apostolico, Apostolicus postulat à me. Non credere possum hoc mandatum ab eo exortum: et hoc tibi nihil utile est. Et donec à me vel hujus Sedis Archidiacono, me jubente, accipias pœnitentiam, permane in excommunicatione. Et ejecit eum de Ecclesia.—Labbe, tom. ix. p. 909.

[3] Propter hoc his quæ in prædicta Littera continentur, filialiter et obedienter non obedio, contradico, rebello.

[4] Breviter recolligens dico: Apostolicæ Sedis Sanctitas non potest nisi quæ in ædificationem sunt, et non in destructionem. Hæ autem provisiones non sunt in ædificationem, sed in manifestissimam destructionem.—Matt. Paris, p. 871.

Catholic Bishops agreed to it. So that the Legate found himself compelled not to press the matter "until the consent of the Prelates of the other nations had been obtained.[1]" Every one, too, is aware of the opposition made by all the Kings of France from the time of S. Louis (IX.), to these reservations to which the Apostolic See laid claim, being urged to it by the complaints which the Bishops uttered when they saw their rights usurped by the Popes. See Peter de Marca, Book iv. Chap. ix., and Franciscus Duarenus, Book v., "*de Sacris Ecclesiæ Ministeriis,*" Chapters viii. and xi.

V. I conclude with the authority of the eminent French civilian, Peter Rebuffi,[2] in his "*Praxis Beneficiorum,*" Tit. "*de Dispensat. ad plura Beneficia,*" No. 32, making the sixth Proof of our Principle:—"The ignorant Bishops not knowing what fair privileges the Canon Law had assigned to them, little by little, by custom and through the style of writing adopted by the Papal Court, suffered themselves to be robbed of them, and neglected their own rights. But nevertheless they still are able, by law, to dispense in the before-mentioned case of necessity.[3]"

In this passage Rebuffi attributes to their *ignorance* the consent of Bishops to the various reservations made by the Popes; however it is certain that it was not ignorance in all cases, but it was done either for expediency or through a spontaneous obsequiousness towards the Apostolic See. The four following authorities are also excellent upon this subject. The first is from the Council of Tribur celebrated in 895, by twenty-two German Bishops. In the 30th Canon they speak thus:—"In memory of the blessed Apostle Peter, let us honour the Holy Roman and Apostolic See, &c. . . . . Wherefore humility and gentleness must be preserved in order that we may bear, and with pious devotion endure, the scarcely tolerable burden put upon us by

[1] Donec per regna alia Prælati consensent.—Matt. Paris, pp. 329, 330.

[2] Peter Rebuffi, a learned jurisconsult, who lived in 1487. He did not receive Priest's Orders till he was sixty years old, having refused many honourable and lucrative situations. He died at Paris in his seventieth year.—TRANSL.

[3] Ignari Episcopi, nescientes quàm pulchra Jus Canonicum eis tribuisset privilegia, paulatim ex consuetudine et stylo Curiæ Romanæ derogari illis passi sunt, et jus suum neglexerunt. Veruntamen adhuc jure possent ex prefatâ necessitatis causâ dispensare.—Rebuffi, p. 183.

that Holy See.[1]" The second is that of S. Fulbertus, Bishop of Chartres, in the eleventh century, who, in Letter 48, written to the Archbishop of Tours, to whom the Pope, without just cause, had refused the Pall, bids him have patience and wait, assigning the following reason:—"For some things, much to be revered by us, are contained in the privileges of the Roman Church, which, on account of our neglect, are not easily to be found in our own storehouses.[2]" By this subtile and quiet irony Fulbertus would have us understand that many of the privileges claimed by the Apostolic See had their sole foundation in the consent and sufferance of the Bishops. The third is from Hildebert, Bishop of Mans, who, in the forty-seventh Epistle, speaking to the Pope, makes the following complaint:—"Owing to my obedience to you, I am daily made the laughing-stock of my enemies, as though I had altogether lost the power of managing the Church committed to me.[3]" And, again:—"You have entirely taken away the Canonical authority which was delivered to all the Bishops.[4]"

The fourth is from S. Bernard of Clairvaulx, who writes thus to Pope Eugenius:—"I speak of the murmurs and the complaints of the Churches; they cry out that they are maimed and dismembered,[5]" &c.

[1] In memoriam beati Petri Apostoli honoremus Sanctam Romanam et Apostolicam Sedem, &c. Quare servanda est cum mansuetudine humilitas, ut licet vix ferendum ab illâ Sanctâ Sede imponatur jugum, conferamus, et piâ devotione toleremus.—Labbe, tom. ix. p. 461.

[2] Continentur enim quædam reverenda nobis in privilegiis Romanæ Ecclesiæ, quæ propter negligentiam nostram non facilè inveniuntur in armoriis nostris.—Bib. Pat. tom. xviii. p. 17.

[3] Pro obedientiâ vestrâ adversariis meis factus sum totâ die in derisum, tanquam qui omnino accuserim disponendi de commissa mihi Ecclesiæ facultatem.

[4] Canonicam et traditam omnibus Episcopis potestatem abstulistis.—Hildebert, Book ii. Ep. 47.

[5] Murmur loquor et querimoniam Ecclesiarum. Immari se clamitant ac demembrari subtrahuntur, Abbates Episcopis, Episcopi Archiepiscopis, &c.—(As in the Introduction.)

THE FIFTH PRINCIPLE.

Without the consent of the Bishops the Pope could not deprive them of the power to dispense with impediments to Marriage and other Canonical Laws.

Examples of the Ancient Churches of Asia, Africa, and France, Authorities of SS. Zosimus, Gelasius, Gregory the Great, and other ancient Popes.

The doctrine of S. Augustine and the other Fathers confirmed by the Ancient Roman Missals: viz.: that the first and immediate party in which all Ecclesiastical authority fundamentally resides is the Church and not the Pope.

The Decrees of the General Councils of Constance and Florence, considered. It is shown how the Decrees of the Fourth and Fifth Sessions of Constance, before and after the intrigues of Eugenius IV., with the Fathers of Basle, were considered throughout the Church, as Decrees regulating all Ecclesiastical jurisdiction.

Testimonies of Cardinals Zabarella, de Ailly, and Cusa; Authorities of John Gerson, Tostado, Bishop of Avila, and of the two other Spaniards, John of Segovia, and Andrew of Escobar, Theologians of the Council of Basle.

The Arguments of Bellarmine and Orsi refuted. The Bull of Leo X. entitled "*Pastor Æternus*," answered.

PROOFS.

I. The force of this Principle is contained in the following syllogism. Without the consent of the Bishops the Pope could not deprive them of a power proper to the Episcopal Order, and the exercise of which the Bishops had for many ages maintained. *Sed sic est*, that the power of granting dispensations, in impediments to marriage and in other Canonical Laws, *is* proper to the episcopal order, and this power the Bishops preserved to themselves for many ages.

Therefore without the consent of the Bishops, the Pope could not deprive them of the power of granting dispensations in impediments to marriage and in other Canonical Laws.

The minor proposition has been already demonstrated in the foregoing Principles, nor does any Theologian, that I am aware of, make any doubt of it.

The major will appear hard and difficult at first, but I shall proceed to establish it by the tradition of all Ecclesiastical antiquity, deduced from the Ancient Councils and Holy Fathers, and from the doctrine of the Roman Pontiffs themselves.

II. At the end of the second century, whilst the Roman Church, with the greater part of the Oriental Church, celebrated Easter Day on the Sunday following the fourteenth day of the March moon, the Asiatic Churches subject to Ephesus, celebrated it on the very fourteenth day of the moon, following the Jewish custom. As this difference between the Churches in so important a point of discipline, seemed an evil in the sight of Pope S. Victor, he commanded the Asiatic Bishops, under pain of excommunication, to conform therein to the practice of the other Churches. Polycrates, Bishop of Ephesus, in answer, declared that he followed the custom of his Diocese as introduced by the Apostle S. John, and observed by his predecessors, SS. Polycarp, Thraseas, Papirius, and Meletius, and that the threats of Victor should not induce him to abandon it. "Brethren, although five and sixty years of age, I am nothing moved by those things which are threatened against us.[1]" So writes Eusebius, who also

[1] Euseb. lib. v. cap. 24.

relates that many Bishops who observed the Roman custom, wrote in strong terms to the Sovereign Pontiff, blaming his conduct towards the Asiatics in desiring to separate them from his Communion for disobedience in a point in no way relating to the Faith, and which was founded on the custom of so many Catholic provinces. Amongst them was S. Irenæus, Bishop of Lyons in France, who in his letter to Victor mentions, together with other examples, how S. Polycarp, when at Rome, could not be induced by the Pope S. Anicetus, to embrace or practise the western discipline in Asia. "But these things did not please all the Bishops. Letters even yet are extant, written by them, in which they sharply rebuke Victor, amongst whom Irenæus, &c."

Socrates asserts the same thing, in these words: "Victor being violently enraged at this, directed a letter of excommunication against them of Asia. Upon which Irenæus severely rebuked Victor in a letter, reproving his too violent attack." In fact, notwithstanding the Decree of the Roman Pontiff many of the Oriental Churches persevered in the Asiatic custom. S. Athanasius in his Book *de Synodis*,[1] No. 5, mentions amongst these, the Churches of Syria, Cilicia, and Mesopotamia. Nor were they regarded by any one as schismatical, until the Œcumenical Council of Nicæa established it by an universal law, that all Churches should celebrate Easter according to the Roman custom. The Bishops of Asia, Syria, Cilicia, and Mesopotamia, therefore judged, that since no Decree of the Universal Church had preceded, the Pope had no power to deprive them of the custom and power of which they were in possession, and much less to excommunicate them on that account. Now if this holds good with respect to a particular custom, and that the custom of this or that province only, what shall we say of a custom generally introduced throughout the Church, and of which the whole body of Bishops was in possession?

III. The Churches of Africa and Cappadocia had the custom of re-baptizing such as passed from heresy into the Fold of Christ. The Pope S. Stephen ordered them under pain of excommunication to abstain from the observance of this custom. This was a point of discipline of much importance, and inti-

[1] S. Athan. tom. ii. p. 574.

mately connected with doctrine. All the other Provinces of Christendom held to the contrary practice of that of Africa and Cappadocia. The Pope had explained himself as one holding supreme jurisdiction. How then did S. Cyprian of Carthage, and S. Firmilianus of Cæsarea act? Perhaps they obeyed the Decree of Rome? Nothing less. They adhered to ancient custom, and in their Synods decreed that they should not stand by what the Council of Rome had ordered. The letters are well known to all which S. Cyprian wrote to Pompeius, against the Pope S. Stephen, and which Firmilianus wrote to S. Cyprian.[1] I shall only mention here, that after having received the definition and command of the Pope, Cyprian assembled a Council composed of eighty-seven of his Suffragans, when after having exhorted them to declare what each thought on the subject of iteration of Baptism, he concluded by saying, that in respect to the internal government and particular custom of each Diocese, there was no one in the Church of God who was Bishop of the Bishops, or who could compel them by threats to forsake what they had found established by their predecessors.[2] Cyprian did not by this deny the prerogatives of the Roman Primacy, which he himself had recognized in his book *de Unitate Ecclesiæ*, and in other works, and well proved from the Scriptures. He did not deny that one, and the principal, of these prerogatives was that the oversight and administration of the whole Church pertained to the successor of Peter, with power to enforce the belief and observance of all those points of dogma or discipline in which the whole body of Bishops, in connection with the head, had legitimately and solemnly concurred. As this was not the case with respect to the practice of re-baptizing, Cyprian and Firmilianus, together with their Bishops, judged that the Pope's attempt to compel them to depart from the discipline of their Churches, was a reprehensible abuse of the Primacy, and that consequently it was their duty neither to obey him nor to regard his threats.

S. Augustine, in his book *de Baptismo*, against the Donatists, constantly alludes to this act of S. Cyprian, never however

[1] S. Cyprian, Ep. 74 and 75.

[2] Neque enim quisquam nostrûm Episcopum se Episcoporum constituit, aut tyrannico terrore ceteros adigit ad obsequium.

speaking of his disobedience as *schismatical*, but rather as *lawful*, the question not having been then decided by any General Council, as it subsequently was, nor any other ground alleged against Cyprian than the custom of the Roman Church. Nay, S. Augustine even confesses that had he been in the same case as S. Cyprian, he would have acted towards the Pope as Cyprian did. In Book ii. Ch. 5: "Nor would we dare to assert any such thing as Stephen has commanded, unless we were supported by the most united authority of the Catholic Church, to which beyond all doubt Cyprian himself would have yielded, had the truth been at that period, made clear and declared by a General Council, been established.[1]" In Ch. 12: "That question concerning Baptism had not yet been carefully handled.[2]" In Ch. 13: "There were none existing then except those who opposed custom to Cyprian, but did not bring forward such arguments for their custom as would have moved such a mind.[3]" In Ch. 14: "Not as yet had there been the Universal Council.[4]" Often as he reflected on the conduct of Cyprian, S. Augustine never noticed any other fault in it than the trifling one of his having made use of some strong expressions against Pope Stephen; and he constantly acknowledged and affirmed, that notwithstanding this resistance to the Papal Decree, Cyprian had never violated or lost sight of Catholic Unity.

IV. According to the African discipline, established by the 125th Canon of the African code, (following Justel's edition,) it was not allowed to Presbyters, Deacons, and the other inferior clergy, to appeal from the Bishops or Synods of their Provinces to the Roman Pontiff, but it was ordered that all their causes should be terminated in Africa. "Priests, Deacons, or other inferior clergy, if they shall think proper to ap-

[1] Aug. tom. ix. p. 98.—Neque nos tale aliquid auderemus adserere, quale Stephanus jussit, nisi Ecclesiæ Catholicæ concordissimâ auctoritate firmati: cui et ipse Cyprianus sine dubio cederet, si jam illo tempore veritas eliquata et declarata per plenarium concilium solidaretur. In cap. 7. Nondum erat diligenter illa baptismi quæstio pertractata. In cap. 8. Tunc non extiterant, nisi qui Cypriano consuetudinem opponerent; defensiones autem ipsius consuetudinis non tales afferrent, quibus illa talis anima moveretur. In cap. 9. Nondum universale Consilium factum erat.

[2] Aug. tom. ix. p. 102.

[3] Aug. tom. ix. p. 103.

[4] Aug. tom. ix. p. 104.

peal from their Bishops, shall appeal only to the African Synods, or to the Primates of their Provinces. But any one who shall think fit to appeal beyond the sea, shall be excluded from Communion by all Africans.[1]" In the year 418, more than two hundred Bishops being assembled in the Sixth Council of Carthage, and amongst them S. Aurelius, Archbishop and Primate of all Africa, S. Augustine of Hippo, and S. Alypius of Tagaste, the Legates of the Pope S. Zosimus propounded to them various novel articles of discipline, which the Pope desired to have introduced into Africa, passing them off as Canons made in the Œcumenical Council of Nicæa, whereas they were in truth Canons of the Council of Sardica, which were either unknown or unused in Africa. One of these new statutes permitted to the African clergy from that time forward an appeal from their Provincial Synods to the Pope. As the African Bishops in this, as in other points of discipline, were in possession of a Rule contrary to that which Zosimus desired to impose upon them (for they did not allow the Bishops to appeal to Rome, which was an Article of Zosimus), they cried out on the spot, and protested to the Legates, that if the Canons which his Holiness desired to introduce into Africa were in reality enacted at Nicæa, they were ready to receive them; but as these Canons were not to be found in the African copies of the Council of Nicæa, they demanded and required that deputies should be sent to Constantinople and Alexandria, who should make minute inquiry as to the number and subjects of the Nicene Canons. Let us hear S. Alypius. "Alypius, Bishop of the Church of Tagaste and Legate of the Province of Numidia, said:—Concerning this matter, we declare that we will observe whatsoever was enacted in the Council of Nicæa, but as yet this disturbs me, that when we look into the copies of the Nicene Council we find there nothing like these things.[2]" Let us also listen to S.

[1] Just. p. 169.—Presbyteri, Diaconi, vel ceteri inferiores clerici, si ab Episcopis provocandum putaverint, non provocent nisi ad Africana Concilia vel ad Primates Provinciarum suarum. Ad transmarina autem qui putaverit appellandum, à nullo intra Africam Communionem suscipiatur.

[2] Alypius Episcopus Ecclesiæ Tagastensis, Legatus Provinciæ Numidiæ, dixit: De hoc id nos servaturos profitemur, quod in Nicæno Concilio constitutum est. Adhuc tamen me movet, quod cùm inspiceremus exemplaria Synodi Nicænæ, ista ibi minime invenimus.—Just. p. 142.

Augustine. "Augustine, Bishop of the Church of Hippo, said, —And we declare that we will observe this, reserving to ourselves the right of making a more exact search into the Acts of the Nicene Synod.[1]"

Now we plainly gather from this narrative, which is taken faithfully from the Acts of the Synod, that the African Bishops mutually believed and determined that the Pope could not oblige them to alter their discipline, except he were supported by the authority of a General Council, and that a generally received one like the Council of Nicæa. In confirmation of this doctrine, when the authentic copies of the Council of Nicæa were received from Constantinople to Alexandria, and no such Canons as those alleged by Zosimus were found in them, the African Fathers considered themselves to be freed from obeying him, and wrote to the then Pope, Celestine, (Zosimus and Boniface having in the meanwhile died,) that noble letter, in which, amongst other things, they bid him, from that time forward, not to receive the appeals of the Clergy of Africa, seeing that no Decree of any General Council had infringed upon the African discipline, but that on the contrary by the Canons of Nicæa, the Bishops and Clergy ought in all things to be subject to their own Metropolitans, and that in the provinces where suits had been commenced, there they ought to be terminated: that as the Holy Spirit poured out the Light of His Grace upon some provinces, so He did not deny it to others; that if persons were dissatisfied with the decisions of the Diocesan Councils, the Provincial Synod, and, after that, the National, were open to them. "Let your Holiness, as it becomes you, reject the shameful appeals of litigious Priests and Clerks, since by no definition of the Fathers is this right of the African Church taken away: and the Nicene Decrees have most plainly subjected both the inferior order of Clergy and the Bishops themselves to their Metropolitans; for they have most prudently and with justice provided that every affair should be terminated in the place where it arose. Nor will the Grace of the Holy Spirit be wanting to any Province, for it is especially granted to every one, if he is not satisfied with the judgment of those who took

[1] Augustinus Episcopus Ecclesiæ Hipponensis dixit: Et hoc nos servaturos profitemur, salva diligentiore inquisitione Concilii Nicæni.

cognizance of his case, to appeal to the Synod of the Province, or even to an Universal Council.[1]" Shortly before this, whilst Boniface still lived, and it was supposed, or at least hoped, that the copies of the Council of Nicæa which had been sent for from the East would agree with those already possessed by the Church of Africa, these same Bishops had addressed another letter to the Pope, in which they spoke thus:—"We believe with the aid of GOD's mercy, that we shall not yet endure that *typhus* whilst your Holiness presides over the Church of Rome.[2]" They designate this pretension of the Roman Pontiffs as ambition and pride, since, in the language of that time, the word *typhus* had that signification. See Bossuet, Part ii., Book xi. Chapter 14,[3] and the anonymous writer of the Sorbonne, in his book, "*de Antiquis et Majoribus Episcoporum Causis*," Chapter xliii.

V. This resolute conduct of the Fathers of the African Church towards Pope Zosimus in the fifth century, reminds mo of that of the Bishops of France towards Pope Hadrian II., in the ninth, when the false and spurious Decretals of Isidore Mercator were opening the door to the Roman reservations. In the year 871, in a Council held at Douzi,[4] by thirty Bishops of the Province of Rheims, Hincmar, Bishop of Laon, was deposed, having been proved guilty of many most grievous crimes, both canonical and civil. The Pope (of whose assistance Hincmar had unlawfully availed himself,) wished to call both the guilty party and his cause to Rome, whereupon the Bishops addressed him a grave and lengthy Epistle, strengthened by the authority of many Councils, Popes, and Emperors, and by that of those

[1] Presbyterorum quoque et sequentium Clericorum improba refugia, sicut te dignum est, repellat sanctitas tua, quia et nulla Patrum definitione hoc Ecclesiæ derogatum est Africanæ: et Decreta Nicæna, sive inferioris gradus Clericos, sive ipsos Episcopos suis Metropolitanis apertissime commiserunt: prudentissime enim justissimeque viderunt, quæcumque negotia in suis locis, ubi orta sunt finienda. Nec unicuique provinciæ gratiam SANCTI SPIRITUS defuturam: maxime quia unicuique concessum est, si judicio offensus fuerit cognitorum, ad Concilia suæ Provinciæ vel etiam universale provocare.

[2] Credimus adjuvante misericordia DEI nostri, quod tua Sanctitate Romanæ Ecclesiæ præsidente non sumus jam istum typhum passuri.

[3] Bossuet, tom. ii. p. 135.

[4] Labbe, tom. viii. p. 1539.

very African Bishops whom we have just mentioned, from which appeared the form of the judgments which ought to be followed in Ecclesiastical suits.[1] The substance of this Letter was to the effect that in the deposition of Hincmar of Laon, they, the Judges, had observed the form which the ancient Canons, the Roman Pontiffs, and the Imperial Law, ordered to be observed in the processes of Bishops, namely, that the processes of Bishops should be proceeded with and terminated within their own Provinces, and not out of them. That granting this discipline to have the authority of ancient examples, they were surprised that his Holiness should wish to deprive them of this power, by giving ear to a person convicted of the gravest offences, and endeavouring to annul so solemn and canonical a sentence. "Our venerable brother Actardus coming to us hath delivered to us the Epistle of your paternity to us your sons, in which, when we had considered it in our Assembly, we discovered certain things which affected our minds with no small astonishment, and caused us not slightly to doubt whether they were so written, &c.[2]"

VI. About the same time, and upon the same business, the Emperor Charles the Bald also wrote a letter to the Pope, dictated by Hincmar, Archbishop of Rheims, and President of the Synod of Douzi. In this Letter he proves by the authority of Councils and Fathers that no Laws (not excepting those of the Apostolic See), contrary to that which was generally received by the Canons of the Church, either can or ought to have any force, and, amongst other passages, he alleges the celebrated saying of S. Leo the Great, in Sermon iii., on the day of his coronation :—"The privilege of Peter therefore remains wherever

[1] Of this noble piece of antiquity Sirmondus only published a small part in his Collection of the Councils of France, which was all that was known in his time, and extends but little beyond the beginning. The author of the Supplement to the Councils, and, after him, John Gerbais at the end of his treatise "*de Causis Majoribus*," printed it at greater length (some six times larger), but still imperfect.—Ant. Pereira.

[2] Veniens ad nos venerabilis frater Actardus tradidit nobis Epistolam à vestrâ paternitate filiolitati nostræ directam, quam cum in conventu nostro fecimus recenseri, quædam in ea invenimus, quæ stuporem mentibus nostris non mediocriter induxerunt, feceruntque nos non modicum dubitare, utrum aliter putaremus, an illa ita essent posita, quemadmodum personabant, &c.—Supp. to the Councils of France, p. 274.

judgment is given according to his equity.[1]" From which the learned Prelate draws this conclusion, that whenever the Successor of Peter, or any other Prelate, acts contrary to the Canons generally received, the privilege or prerogative of the Primacy at once ceases and his decrees are of no force. "By which sentence it appears, that the privilege of Peter does not remain, where judgment is not given according to his equity. And since anywhere, without exception, the privilege of Peter does not remain where judgment is not given according to his equity, shall we obey the command or shall we receive the judgment which has not been uttered *ex Petri æquitate*, and which for this reason is wanting in his privilege?[2]" And again speaking to the Pope: "Therefore command and pass judgment in what is to be ordered and judged in virtue of the privilege of the great Peter according to the judgment of his equity, that, as his Co-Apostle speaks, 'thy ministry be not blamed.'[3]" In conclusion, the Emperor, or rather the Archbishop in his name, threatens Hadrian and warns him to take care not to oblige them by his usurpations to act towards him as the Fathers of the Fifth Œcumenical Council did towards Pope Vigilius, separating themselves from his Communion, and, by command of the Emperor Justinian, ordering his name to be erased from the Sacred Diptychs; which affords a good proof of the authenticity of the addition to the Acts of the Fifth Synod published by Baluze at the end of Action vi., from the Codex of Jowy. As this addition had not been made public in the time of Peter de Marca, it is not to be wondered at that he understood and explained this passage in the letter of Charles the Bald in a wrong sense:—"We humbly entreat your Holiness not to force us and our people to take most unwillingly

[1] Manet ergo Petri privilegium, ubicunque ex ipsius æquitate fertur judiciam. —S. Leo, tom. i. p. 9.

[2] Quâ sententiâ constat, quia non manet Petri privilegium, ubi ex ipsius æquitate non fertur judicium. Et quia ubicunque sine ullâ exceptione non manet Petri privilegium, ubi ex ipsius æquitate non fertur judicium: obaudiemus jussum, vel recipiemus judicium, quod non ex Petri æquitate probatum, ac per hoc ipsius privilegio fuerit destitutum?—Supp. to the Councils of France, p. 273.

[3] Ergo jubete et judicate privilegio magni Petri juxta æquitatis ejus judicium, quæ jubenda et judicanda sunt, ne ut dicit ejus Co-Apostolus, vituperetur ministerium vestrum.

that step which in the Fifth Universal Synod it is found we must adopt.[1]"

I do not intend here to enter into the question, whether the cause of Hincmar of Laon was such as, by the Canons, to make his appeal to Rome available to him, nor to inquire into the sense of the Canons of Sardica relating to the subject, which Hadrian II. alleged. Upon this matter see Peter de Marca, Book vii. Chapter 3, Quesnel, Diss. v. Chapter 14, Gerbais in his Treatise "*de Causis Majoribus*," Art. vii., and Louis Dupin in his Treatise "*de la Puissance Ecclésiastique*," p. 645, and Dissert. ii. "*de Formâ Judiciorum*," Chapter i. § 3. It is enough that we know and can prove that the Bishops of France, as well as the most Christian Kings themselves, held it as a certain doctrine, in the ninth century, that the Pope could not, without the consent of the Bishops, arrogate to himself those rights and privileges which the Bishops, whether by Canon or by custom, possessed.

It is well known with what inimitable boldness S. Hilary of Arles, in the middle of the fifth century, defended his Metropolitical rights upon this very subject of Appeals, rights which S. Leo the Great attempted to restrain upon occasion of an appeal made to him by Chelidonius, Bishop of Besançon, from the judgment of the Synod assembled by S. Hilary. It is also equally well known with what firmness S. Ignatius, Patriarch of Constantinople, in the ninth century, preserved his right of ruling the Province of Bulgaria, nothing terrified either by the prohibitions of Hadrian II. or by the threatened excommunications of John VIII. And this resistance in no way derogated from the holiness of Hilary or Ignatius, both of whom are venerated as Saints by the Church of Rome. See also what Baronius has said of the latter in the year 878.

VII. To return to the Bishops of France. So firmly rooted were they all in this doctrine, that, without their previous consent, none of those privileges or exemptions which were sometimes granted by the Court of Rome, to their prejudice, took effect or were executed. Thus the Fathers of the Synod of

[1] Vestrum sanctitatem humili prece deposcimus, ne nos et nostros satis invitos ad id cogatis convertire, quod in Quintâ Universali Synodo invenitur nobis tenendum.—Pet. de Marca "de Concordiâ," chap. xii. No. 7.

Vernum,[1] in the year 844, protested and acted in Canon 11, which treated of the affair of Drogo, a natural son of Charlemagne. The Pope, Sergius, had ordained this man with the title and prerogatives of Archbishop of Metz (a Church which up to that time had been simply suffragan to that of Treves), and had constituted him Vicar General of the Apostolic See in Gaul and Germany. As this new dignity disarranged and diminished the honours and precedency of the Metropolitans, the Fathers of this Synod declared that the step could not be taken until the unanimous vote and consent of a General Council of both nations had been obtained.[2] As this was wanting Drogo remained without his prerogative, as may be gathered from Hincmar of Rheims, who says:—"What he so earnestly sought for he did not in fact obtain, the parties interested in the matter refusing their consent.[3]"

The same thing happened to Ansegisus, Metropolitan of Sens, whom Pope John VIII., at the request of the Emperor Charles the Bald, had nominated Primate of all France and Germany.[4] The Fathers of the Council of Pontyon, in the year 876, opposed it, and for that time at least the pretensions of Ansegisus came to nothing. Hincmar of Rheims has fully described the causes of this opposition, which were to the effect that this grace granted by the Pontiff in favour of Ansegisus was both contrary to the Canons and a violation of the powers possessed by the Metropolitans of France and Germany.

In the year 948, the Bishops of two Provinces assembled in the castle of Mozomo, in the diocese of Treves, to settle the difference between Hugo, son of Count Heribert, and Artaldus, a monk of the Abbey of S. Remigius, both of whom claimed the Archbishopric of Rheims. Hugo presented to the Council letters Apostolic from Pope Agapetus II., ordering them to restore the mitre to him, but notwithstanding, the Fathers having examined the Brief and found it to be inconsistent with the Canons, paid no attention to it, and awarded the Archbishopric to Artaldus.

[1] Either Vernon-sur-Seine, Verneuil-sur-Oise, or more probably Vern, a royal seat between Paris and Compiegne.—TRANSL.

[2] Councils of France, tom. iii. p. 21.

[3] Quod affectu ambiit, effectu non habuit, non consentientibus quibus intererat. —Hincmar, Ep. 44, "ad Episcopos," chap xxxi. vol. ii. p. 737.

[4] Labbe, tom. ix. p. 281, &c., and p. 295.

Thus Flodoardus in his Chronicles: "Hugo the Bishop coming there delivered to the Bishops, by his clerk, certain letters in the name of Pope Agapetus, containing no canonical authority, but simply ordering this, that the Episcopal chair should be restored to Hugo; which having been read, the Bishops and Abbats in Council replied that the matter which had been regularly commenced should be canonically handled,[1]" &c.

In the year 1004, Count Fulk had built a church in the vicinity of Tours, which the Bishop of the Diocese refused to consecrate, upon which the Cardinal Legate of Pope John XII., acting upon the authority which he conceived himself to possess, undertook to do so upon his own responsibility. But the French Bishops took this act of the Legate very ill, regarding it as an usurpation, and they did not forbear to complain of this interference on the part of the Pope, (by means of his minister), in thus exercising Episcopal functions in the Dioceses of others, "which therefore" (writes Rodolphus Glaber,[2] a monk of Cluny, Book ii. Chap. 4,) "when the Gallican Bishops heard, they perceived that the sacrilegious presumption proceeded from a blind cupidity.[3]" And again, "Although the Roman Pontiff, on account of the dignity of the Apostolic See, is reckoned more worthy of reverence than all other Bishops, he nevertheless is not allowed in any matter to transgress the tenor of the Canons.[4]" And again, "All equally detesting (since it appeared too indecorous) that he who governed the Apostolic See should be the foremost to transgress the tenor of the Apostolic and the Canonical laws.[5]"

[1] Veniens illue Hugo Præsul, litteras quasdam ex nomine Agapiti Papæ misit ad Episcopos per Clericum suum, qui eas Româ detulerat, nihil auctoritatis Canonicæ continentes; hoc tantum præcipientes, ut Hugoni Remense redderetur Episcopium. Quibus lectis, ineuntes Episcopi Concilium cum Abbatibus responderunt, ut quod regulariter cœptum fuerat, Canonicè pertractaretur.—Labbe, tom. ix. p. 622.

[2] Duchesne, tom. iv. p. 15.

[3] Quod utique audientes Galliarum Præsides præsumptionem sacrilegam cognoverunt ex cæcâ cupiditate processisse.

[4] Licet Pontifex Romanæ Ecclesiæ, ob dignitatem Sedis Apostolicæ, ceteris in orbe constitutis Episcopis reverentior habeatur, non tamen ei licet transgredi in aliquo canonici moderaminis tenorem.

[5] Universi pariter detestantes, quoniam nimium indecens videbatur, ut is qui Apostolicam regebat Sedem, Apostolicum primitus ac Canonicum transgrediatur tenorem.

In the Council of Anse, (near Lyons,) held in the year 1025, Gauslenus, Bishop of Maçon, complained bitterly of the conduct of Bourchard, Archbishop of Vienne, in Dauphiné, who, upon the strength of a certain privilege to which the monks of Cluny pretended as granted to their House by the Pope, exercised jurisdiction over the monks referred to, although they were not his subjects. Upon which the Canons of Chalcedon and other Councils were read, which ordain that all Abbats and Monks shall live in subjection to, and shall recognize, the Bishop of the Diocese as their Prelate; and the privilege spoken of was declared to be null and void, as opposed to the ancient Canons, and Bourchard being convinced gave to Gauslenus the satisfaction he required. "Having read the opinions of the Holy Synod of Chalcedon, and of many authentic Synods, &c., they decreed that the Charta was not valid, since it not only did not agree with the Canons, but even was contrary to them. The Archbishop being convinced, asked pardon of Gauslenus.[1]"

VIII. The principle on which the liberty and the opposition of the ancient Bishops was founded was that which we are now demonstrating, viz: that the Pope could not, without the consent of the Bishops, rob them of those rights and prerogatives which either by prescriptive right, or by the Canons of the General Councils belonged to the whole body of Bishops. Since the Pope was not despotic Lord over the Canons which had been universally established and received, to upset or alter the Ecclesiastical Hierarchy at his will, but rather he was, or ought to be, the conservator of those Canons, and it was his duty to see that each, in his place, preserved his rights uninjured. The Sixth Canon of Nicæa, renewed subsequently in the seventh Session of Ephesus, orders that the privileges of each Church or Province shall be preserved; and to this the celebrated and learned Hincmar, Archbishop of Rheims, alludes in a letter to Pope Nicholas I. in these words: "The privileges of the Holy Churches established by the Canons of the Fathers and fixed by the venerable

[1] Relegentes Sancti Chalcedonensis Concilii et plurimorum authenticorum Conciliorum sententias, &c., decreverunt chartam non esse ratam, quæ Canonicis non solum non concordaret sed etiam contrairet sententiis. Archiepiscopus, ratione convictus, à Gausleno veniam petiit.—Labbe, tom. ix. p. 859.

decrees of the Council of Nicæa, no wickedness can destroy, no depravity can change.[1]"

In a word, it was the certain opinion of all antiquity, that the Church of Rome was *the first*, yea, *the principal*, yea, *supreme* amongst individual Churches, but not the Queen of all together. That the Pope was indeed the Primate of each Bishopric, but not monarch of the whole Church, because the quality of Queen belongs alone to the Universal Church, the quality of Monarch to the Œcumenical Council which represents her. In this sense S. Augustine says admirably, on Ps. xliv. No. xxiii. "The Churches are the daughters of the Apostles, they are the daughters of Kings—Behold Rome, Behold Carthage, they are the daughters of Kings, and out of them all is made One Queen.[2]"

Which is the same thing as S. Jerome had already said in fewer words; "If authority is asked for, the World is greater than the city (Rome).[3]"

IX. John Gerson, the venerable and enlightened Chancellor of Paris, has treated of this subject in many of his works, as in his treatise *de potestate Ecclesiasticâ*. Consid. 10: in his sermon *pro viagio Regis Romanorum*,[4] &c: in that *contra Bullam Mendicantium*:[5] and also in that *de Statibus Ecclesiasticis*:[6] contained in the second vol. of his works. Omitting other excellent passages, I shall confine myself here to some extracts from his treatise, entitled, *De modis uniendi ac reformandi Ecclesiam in Concilio*, in which this great theologian gives us plainly to understand how the Reserves of the Apostolic See in a great measure depend upon the consent and sufferance of the Bishops. For the Reserves contained in the "*Sextus*," and in the Clementines, Gerson calls usurpations of the jurisdiction belonging to others, and styles them arrogant and proud artifices of the ambition of some of the Popes, who

[1] Privilegia Ecclesiarum Sanctorum Patrum Canonibus instituta et venerabilibus Nicenæ Synodi fixa Decretis, nullâ possunt improbitate convelli, nullâ pravitate mutari.

[2] Ecclesiæ filiæ Apostolorum sunt, filiæ Regum sunt. . . . Ecce Roma, ecce Carthago, filiæ Regum sunt, ... et ex omnibus fit una quædam Regina.—S. August. tom. iv. pp. 393, 4.

[3] Si auctoritas quæritur, Orbis major est Urbe.

[4] Gerson, tom. ii. p. 239. [5] Ibid. tom. ii. p. 273. [6] Ibid. tom. ii. p. 529.

by this means endeavoured to lower the Episcopal body, and to render the secular Princes themselves subject to the Papal chair. "Who made the Sextus and the Clementine books? containing in all of, and throughout, them, arrogance, pride, the usurpation of the rights of Ordinaries, an injurious diminution of those of the Roman Emperors, and a most perilous suppression of their power and that of others, and many other things fabricated, maliciously and by an obstinate ambition, to the injury of the Republic both in spiritual and temporal matters.[1]" And further on, "The Pope, by usurping the jurisdiction and honour of the other Bishops, whom he calls brothers, especially so generally, sins mortally.[2]" And then, "As the Pope dares not intrude himself contrary to the evangelical statutes of CHRIST, SO NEITHER HAS HE THE POWER TO APPLY OR RESERVE TO HIMSELF THE POWER CONFERRED BY CHRIST ON THE OTHER BISHOPS.[3]" And upon this he had said, "So great a fraud some of the ancient Popes committed in the administration of the Papacy, who, with many learned, it were better to say malicious, men, not having GOD before their eyes, usurped to themselves many rights, and acted for themselves, and took the best part to themselves, caring not at all for the Republic.[4]"

X. Francis Zabarella, a famous and learned Cardinal of the Florentine nation, who lived at the time of the Council of Constance, in his treatise *de Schismatibus*, writes thus: "A custom obtained amongst the ancients of settling all difficulties by Councils which were frequently held. But afterwards certain of the chief Pontiffs, who ruled the Church more after the

[1] Quis fecit libros Sextum et Clementinas? Arrogantiam, superbiam, juris Ordinariorum usurpationem, Imperatorum Romanorum injuriosam detractationem et eorum aliorumque potestatis periculosissimam suppressionem, et alia multa in spiritualis et sæcularis Reipublicæ læsionem malitiose et pertinaci ambitione fabricata, in omnibus et per omnia concludentes?—Gerson, tom. ii. p. 167.

[2] Papa usurpando aliorum Episcoporum, quos fratres appellat, jurisdictionem et honorem, præsertim ita generaliter, peccat mortaliter.—Gerson, tom. ii. pp. 133, 4.

[3] Sicut contra statuta Evangelica CHRISTI non audet Papa se intromittere: ITA NEC VALET POTESTATEM COLLATAM A CHRISTO ALIIS EPISCOPIS, SIBI APPLICARE NEC RESERVARE.—Gerson, p. 166.

[4] Tantam fraudem in administratione Papatus fecerunt antiqui aliqui, qui cum multis viris peritis, immo malitiosis, DEUM non habentes præ oculis, multa jura sibi usurparunt, et pro se fecerunt et meliorem partem sibi attribuerunt, et de Republica non curarunt.

manner of earthly Princes than of the Apostles, neglected to hold Councils, from which omission many evils sprang: whence it appears that the saying, that the Pope possesses the plenitude of power, ought to be understood not as of him alone, but as in the whole. So THAT THE POWER ITSELF IS IN THE WHOLE, AS IN THE FOUNDATION, and in the Pope as in the principal minister by whom the power is displayed.[1]" And further on, "Many flatterers, for many ages past, have been willing to please the Popes, and even to the present day they have persuaded them that they possess every thing. Hence an infinity of errors have followed, for the Pope hath taken possession of all the rights of the inferior Prelates, so that the inferior Prelates are held for nothing,[2]" &c. And again, "A limit ought to be set to the power of the Popes, that the inferior power may not be subverted, and that the Pope may not have the power to do what he likes, but what he ought.[3]"

Cardinal Nicholas de Cusa, a German, Bishop of Brescia in Italy, in the Second Book of his work *de Concordantiâ Catholicâ*, after having shown in Chapter xxviii., how the Pope is subject to the Canons of General Councils, and is bound in conscience to maintain the rights of the Bishops uninjured, goes on to show, in Chapter xxxii., how the whole force of the Papal Reserves arises from the tacit consent of the Bishops themselves, and that whenever the latter shall claim their rights the Pope is under an obligation to resign them. "Through the tacit consent of the whole Church, the Popes have used the reservations

[1] Mos inter antiquos obtinuit, quod omnia difficilia per concilium terminabantur: et crebro fiebant. Postea vero quidam summi Pontifices, qui magis ad modum terrenorum Principum quam Apostolorum Ecclesiam rexerunt, non curarunt facere concilia; ex quâ omissione prodierunt multa mala. Ex hoc apparet quod id quod dicitur, quod Papa habet plenitudinem potestatis, debet intelligi non solus, sed tanquam apud universitatem. ITA QUOD IPSA POTESTAS EST IN UNIVERSITATE, TANQUAM IN FUNDAMENTO et in Papâ tanquam in principali ministro, per quem hoc potestas explicatur.—Zabarella, p. 559.

[2] Multi assentatores voluerunt placere Pontificibus per multa retro sæcula, et usque ad hodierna suaserunt eis quod omnia possent. Ex hoc infiniti secuti sunt errores, quia Papa occupavit omnia jura inferiorum Prælatorum: ita quod inferiores Prælati sunt pro nihilo, &c.—Zabarella, p. 560.

[3] Oportebit determinare Papæ potestatem, ut non subvertantur inferiores potestates: et ut Papa possit non quod libet sed quod licebit.

made to them. . . . But now this exorbitancy, on account of various injuries, begins to give offence, and resistance is arising. Wherefore, I think that the Pope can no longer reserve, generally, elective benefices, except it shall be expressly granted to him by a Council,[1]" &c.

XI. The illustrious Bossuet, in our own time, has shown the same thing, with his usual soundness and learning, throughout his Eleventh Book of his Defence. Where amongst other weighty authorities proving this to have been the doctrine of the early ages, he alleges that of Pope Zosimus to the Bishops of France. "Even the authority of this See cannot grant or alter anything against the statutes of the Fathers, for amongst us antiquity flourishes with unshaken root, to which the statutes of the Fathers enjoin reverence.[2]" And again, that of Pope Gelasius to the Bishops of Dardania. "The laws of every Synod which the consent of the universal Church has approved, no See ought more fully to execute than the chief See.[3]" And again, that of Pope Celestinus I., to the Bishops of Illyricum: "Let the laws rule us, not we the laws.[4]" Also, that of Pope Leo the Great: "Those things are very wicked and very bad, which are shown to be contrary to the most holy Canons.[5]" Also, that of Gregory I: "If ye keep not the Canons, and if ye wish to destroy the statutes of our forefathers, I know not who ye are.[6]" And that of Martin I.: "We cannot destroy the Ecclesiastical Canons, who are the

[1] Per tacitum consensum totius Ecclesiæ Romani Pontifices reservationibus factis usi sunt. . . . Nunc autem exorbitantia ob varias læsiones displicere incipit et oritur contradictio. Quare puto Papam amplius non posse generaliter reservare electiva beneficia, nisi expresse ei indulgeretur per concilium. Papa enim invitis Episcopum dare non potest, &c.—Cusa, p. 767.

[2] Contra statuta Patrum concedere aliquid vel mutare, ne hujus quidem sedis potest auctoritas. Apud nos enim, in concussis radicibus vivit antiquitas, cui statuta Patrum sanxere reverentiam.—Bossuet, Defen. Decla. Cler. Gall. tom. ii. p. 119.

[3] Uniuscujusque Synodi Constitutum, quod universalis Ecclesiæ probavit assensus, non aliquam magis exequi sedem præ ceteris oportere quam primam. —Ibid. p. 130.

[4] Dominentur nobis regulæ, non regulis dominemur.—Ibid. p. 120.

[5] Nimis improba sunt, nimis prava, quæ sanctissimis Canonibus probantur adversa.—Ibid. p. 121.

[6] Si Canones non custoditis et Majorum vultis statuta convellere non agnosco qui estis.—Ibid. p. 121.

defenders and keepers of the Canons, not their transgressors.[1]" And lastly that of Leo IV.: "We cannot change the boundaries set before by the Fathers.[2]"

XII. John Launoy in the letter to Louis Cusin, which is the eighth of the first Book,[3] and in another to Thomas Rullandus, which is the third of the second Book, adduces authorities from more than fifty of the Sovereign Pontiffs, to prove that the power of the Pope ought to be regulated, not by his own will, but by the Canons. He afterwards mentions the oath which in former times the Popes were accustomed to make before the image of S. Peter, on the day of their coronation, by which they promised to observe, without diminution or alteration, all the Canons of the General Councils, the Statutes of the Pontiffs their predecessors, and the whole body of Ecclesiastical discipline generally received. The form of this oath was taken from the *Diurnal of the Roman Pontiffs*, which the Jesuit Garnier published, and is the same as Vander Hart describes as contained in the Reformatorium of the Council of Constance, and taken by Martin V.[4]

From this Launoy goes on to relate the advice which the four Cardinals, Contarini, Carafa, Sadoleti and Pole, the Archbishops of Salerno and Brundusium, the Bishop of Verona, the Abbat of S. George at Venice, and the Master of the Sacred Palace, gave to Pope Paul III., being assembled for the purpose of discovering the best means of reforming the Church. These Prelates declared to the Pontiff that the source of all the disorders then devastating the Church, was the attention given by some of the predecessors of his Holiness to the flattery of certain theologians, who perceiving them to be inclined to innovate and to extend the limits of the Primacy in every way, began to inspire them with the notion that whatever the Pope wished was lawful for him. "The beginning of all evils was from this,

[1] Canones Ecclesiasticos solvere non possumus, qui defensores et custodes Canonum sumus, non transgressores.—Bossuet, Def. p. 121.

[2] Non potuimus præfixos Patrum terminos immutare.

[3] Launoy, tom. v. part i. pp. 72 and 281.

[4] *Liber Diurnus R. Pontificum*, containing the ancient forms made use of by the Popes in writing letters and drawing up their acts. Garnier's edition was published in 1680, with notes, and three Dissertations.—TRANSL.

that some of the Pontiffs your predecessors, having as the Apostle Paul says, itching ears, heaped to themselves teachers according to their desires, not in order to learn from them what they ought to do, but that, by means of their study and craftiness, a reason might be contrived why it should be lawful for them to do what they pleased. So that the will of the Pope, be it what it might, was the rule by which his operations and actions were directed. From this source, holy Father, as from the Trojan horse, so many abuses and serious diseases have broken in upon the Church of God.[1]" The nine Prelates then concluded with stating that, if his Holiness desired to act as his office demanded, he must resolve on the contrary maxim, viz. that the successors of Peter are not Lords but Stewards, that they can only do what they ought to do, and that they only ought to do what the Laws and Canons of the Church prescribe. "Following the doctrine of the Apostle Paul, thou wishest to be Steward not Lord, and moreover thou hast decreed that thou willest not what is unlawful, nor dost thou desire a power which thou oughtest not to possess: but, O holy Father, we consider that this should be established before all things, that as in every republic so in this ecclesiastical government of the Church of God, this law should be observed before all others, that as far as it is possible to be done the laws should be observed, &c.[2]" Any one who wishes it may see the whole of this opinion of the Counsellors of Paul III. in Richer, Hist. of Councils, Book iv. Part ii. and in Mansi, Suppl. Vol. v. p. 539.

XIII. In fact any one who knows anything of certain Theologians and Canonists, who flourished before the Council of Trent, will find that the doctrine contained in the comment upon the chapter *Quanto personam*, Book i. Tit. vii. *de Translatione*

[1] Principium omnium malorum inde fuit, quod nonnulli Pontifices prædecessores tui prurientes auribus, ut inquit Paulus Apostolus, coacervaverunt sibi magistros ad desideria sua: non ut ab iis discerent, quid facere deberent, sed ut eorum studio et calliditate inveniretur ratio, qua fieret id quod liberet: ita quod voluntas Pontificis, qualiscumque illa fuisset, Regula esset, qua operationes ejus et actiones dirigerentur. Ex hoc fonte, Sancte Pater, tamquam ex equo Trojano irrupere in Ecclesiam Dei tot abusus et gravissimi morbi, &c.

[2] Secutus doctrinam Apostoli Pauli vis esse Dispensator, non Dominus: ac propterea decrevisti nolle quod non liceat, nec vis posse quod non debes. Illud vero ante omnia, beatissime Pater, putamus statuendum esse, sicut in unâquâque republicâ, ita in hâc Ecclesiasticâ gubernatione Ecclesiæ Dei hanc præ omnibus legem habendam; ut quantum fieri potest, leges serventur, &c.

Episcopi,[1] could only have arisen from flattery. Speaking of the Pope he says, "In anything that he wishes, his will is instead of reason, nor is there any who can say to him, Why doest thou thus? For he is able to dispense beyond law, to make injustice justice, by correcting and altering laws." Again, that which Cardinal John of Torquemada teaches in Book ii. *de Ecclesiâ*, Cap. lxiii. and Cap. lxvii., could only spring from flattery, "that of all ecclesiastical jurisdictions, the Pontificate alone has CHRIST for its immediate Author, so that the power and jurisdiction of the Sacred Apostles proceeded from Peter. That the Ecclesiastical Hierarchy (which mainly consists in the Bishops and Parish Priests) is not of necessity in the Church, by any institution of CHRIST, but is only voluntary and dependent upon the will of the Pope, who consequently may change and alter it as he pleases." So that which De Palude affirms in his Treatise, *de Causâ immediatâ Ecclesiasticæ Potestatis*; Art. v. Conclusions 2 & 3,[2] could only have arisen from flattery, viz.: that "the Bishops and other Clergy, below the Pope, are nothing more than the Pope's deputies in the Church, and accordingly, as his deputies merely, he may remove them from their offices when and how he pleases, without any fault on their part." Again, the rash assertion of Cajetan, in his treatise on the authority of the Pope and of the Council, could only spring from flattery, where he calls the Church "the born slave of the Roman Pontiff.[3]" And finally, from flattery alone must have arisen the title of GOD given to the Pope by the author of the comment on the Extravagant of John XXII., beginning *cum inter nonnullos*, who upon the word *declaramus*, at the end of the Extravagant, says thus, "To believe our Lord God the Pope, the maker of the said Decretal.[4]" So it is in two editions published at Lyons in 1584 and 1606, and in those of Paris published in 1585, 1601, 1612. See what the pious and learned Gerson wrote against these adulatory Theologians of the Pope in his treatise *de Potestate Ecclesiasticâ*, Consid. xii., and in that

[1] In his quæ vult, ei est pro ratione voluntas. . . . . nec est qui ei dicat cur ta facis?—Gloss. on *Veri Dei vicem*. Decret. Greg. ix. book i. tit. vii. cap. iii. p. 203.

[2] Attributed by some to Cardinal John de Godin.

[3] Servam natam Romani Pontificis.

[4] Credere Dominum Deum nostrum Papam conditorem dictæ Decretalis.

de Examinatione Doctrinarum, Part ii. Consid. v., where, in opposition to the opinion held by some, "that recourse should be had to the See and Chair of the Chief Pontiff,[1]" he replies thus: "we should not deny this if Theology there ceased to have its partial Doctors, led away, proud, greedy of gain, envious, favourers of the secular power, and favourers of the spiritual power more than the truth. Otherwise it were better to have none than to endure such.[2]"

XIV. Before the advice of the nine Prelates mentioned above, Launoy had given, with the same intention with which we are now doing so, the famous and incontrovertible decree of the General Council of Florence, which having defined the Pope to be Primate of the whole Church, the successor of S. Peter, the vicar of CHRIST, and the Father and Teacher of all Christians, immediately adds a clause to the effect that we ought to believe that the plenary power given by CHRIST to the Pope to feed, rule, and govern the whole Church, is not a monarchical or despotic power, but a power which ought to be regulated by the Canons, "Et ipsi in Beato Petro pascendi, regendi, ac gubernandi universalem Ecclesiam à Domino nostro JESU CHRISTO plenam potestatem traditam esse, quemadmodum et in gestis Œcumenicorum Conciliorum et in Sacris Canonibus continetur." Thus the writers of that time or the times near to it, cite the decree of Florence, such as John Blondus, Secretary to Eugenius IV. President of the Council, in Book iii. Decade x.; Cardinal Marcus Vigerius; John Eckius in Book ii. Cap. xxv. *de primatu Petri*; the Cardinal of Rochester in Art. xxv. against Luther; and Albert Pighius, in Book iv. last Chapter, of the Ecclesiastical Hierarchy. And it is confirmed by the authentic Greek Edition of the Decree, which, according to Peter de Marca, Book iii. Cap. viii., and Bossuet, Book vi. Cap. xi., literally translated, runs thus: "Secundum quod" or "Juxta eum modum qui et in gestis conciliorum Œcumenicorum et in Sacris Canonibus continetur." Now that we may not be compelled to say that the Pope, together with the General

[1] Fiet recursus ad sedem et curiam Summi Pontificis.

[2] Non negabimus hoc, si Theologia illic habuerit suos doctores non partiales, non seductos, non fastuosos, non quæstuosos, aut invidos, non potestati sæculari, non spirituali plusquam veritati, faventes. Alioquin tolerabilius esset nullos habere quam tales pati.—Gerson, p. 18.

Council, in order to deceive the Greeks, gave a different meaning in the Latin copy from that which they had given in the Greek, we must alter the Latin copy, given in the collections of Councils, by the Greek: for the former instead of having "quemadmodum et in gestis," has "quemadmodum etiam in gestis," thus altering, or to speak more correctly, *totally changing* the sense of the dogmatical decree which was delivered to the Bishops of the Greek Church, present at the Council of Florence, as a Rule of Faith, and which is spoken of by the authors and theologians of those times as a dogma of the whole Catholic Church.

XV. I observe lastly, that it is a fact so certain and well established, that the Pope cannot without the consent of the whole body of Bishops, rob them of their ancient rights, that Hosius, President in the Council of Sardica, A.D. 347, in order that the Pope might be able to interfere by way of appeal and revision of sentence, in causes relating to the depositions of Bishops, put the question to the Synod whether they agreed that, notwithstanding the contrary discipline had hitherto obtained, the accused parties should be permitted to demand of the Sovereign Pontiff new judges to take cognizance of the merits of their suits already determined in the Provincial Councils. Upon their consent Canon VIII. was drawn up, in which this privilege is given to the Pope. "If it please you, let us honour the memory of the Apostle Saint Peter, &c., and the Synod answered *Placet*.[1]"

The same Pope S. Julius I. who in his Epistle to the Orientals, left the most illustrious monument of the prerogative of the Roman Primacy to be found in all Ecclesiastical History, urging the incompetency of the Council of Antioch to condemn Athanasius, and the irregularity of their judging that cause without having first consulted the Apostolic See, does so upon the ground, not of any Divine right deduced from Scripture, but of custom introduced into and received in all the Church by the Bishops themselves. "Judgment ought to have been made

[1] Si vobis placet, Sancti Petri Apostoli memoriam honoremus, &c. Synodus respondit, Placet. [It must however be remembered that the candid Fleury, in writing of the second Canon of the first Council of Constantinople, says, "Ce canon donnant aux conciles des lieux toute autorité pour les affaires ecclésiastiques, semble oter la faculté d'appeller au Pape accordée par le Concile de Sardique, et de revenir à l'ancien droit."—Hist. Eccl. iv. 427.—TRANSL.]

Canonically, and not in that way. It behoved to write to us, &c. . . . . whether are ye ignorant that this is the custom, first that we be written to, &c.[1] . . . . " See Marca, Book v. Cap. xii., and Book vii. Cap. iv., and the excellent anonymous treatise (written as I think by a Frenchman,) which Goldastus cites in Vol. i. p. 690.

I will only add here, that subsequently other Popes spoke in the same manner as Julius had done, reducing and attributing their right to many Reservations to the consent and usage of the Bishops. Innocent I. in his letter to John of Constantinople: "But greater and difficult questions, as the Holy Synod hath determined, and a happy custom requires, are reserved to the Apostolic See.[2]" Gelasius I. in his Commonitorium to Faustus: "They object to us the Canons, not knowing what they say, &c. IT IS THE CANONS THEMSELVES, which require that the appeals of the whole Church be brought to this See for examination.[3]" He does not say "The LORD *Himself*," nor the "*Scriptures themselves*," but "*the Canons themselves*."

XVI. In order to the exact understanding, and *à priori* proof of all we have said upon this important principle, it remains to explain more at large how this subordination to the whole body of the Church which the Roman Pontiffs acknowledge, can subsist with the Primacy which indisputably, by Divine right, belongs to them. First then, it must be noted that the person to whom our LORD CHRIST directly and immediately gave the plenitude of that spiritual power, which He instituted in the Gospel, was not, properly speaking, S. Peter, nor any of his successors; it was *the whole Hierarchical body of the Church*, which *then*, as to its individual members, consisted of S. Peter and the other Apostles and Disciples, and *now*, of the Sovereign Pontiff, Bishops, and other ministers constituting the Ecclesiastical Hierarchy. Every member of these, or each Apostle, is, as an *inferior* member, subordinate to Peter as the *principal* member or *ministerial head* of each; but that same ministerial head

[1] Oportuit secundum Canonem, et non isto modo judicium fieri. Oportuit scribere omnibus nobis: &c. An ignari estis hanc consuetudinem esse, ut primum nobis scribatur, &c.

[2] Majores vero et difficiles quæstiones, ut Sancta Synodus statuit, et beata consuetudo exigit, ad sedem Apostolicam referantur.

[3] Nobis opponunt Canones, dum nesciunt quid loquantur, &c. Ipsi Canones sunt, qui appellationes totius Ecclesiæ ad hujus sedis examen deferri voluerunt.

or that same Peter being, as he is, *a member*, although superior and more worthy, is subordinate to the community or to the whole body of the Church Universal, as a part to the whole, as a son to his mother, as a servant to his mistress; and while every one of the Faithful who refuses to recognize the successor of S. Peter as his superior, will be schismatical, so likewise the successor of S. Peter will be schismatical if he refuses to subject himself to the Catholic Church. And so in fact, Pope Gregory XII. was declared to be schismatical by the General Council of Pisa, and Pope John XXIII. was declared to be a maintainer of schism in the General Council of Constance.

S. Hilary, Bishop of Poictiers, intended this subordination of the Pope to the Universal Church, or to Catholic Unity, when he said against Pope Liberius, "*Anathema tibi Liberi,*" and likewise Firmilianus of Cappadocia, when he wrote thus to Pope Stephen: "Thou hast cut thyself off, deceive not thyself; when thou thoughtest that all could be excommunicated by thee thou didst only excommunicate thyself from all.[1]"

XVII. Now let us hear S. Gregory the Great, Book v. Epistle the eighteenth, to John of Constantinople: "Certainly Peter the first of the Apostles was a member of the Holy and Universal Church. Paul, Andrew, John, what else are they than heads of single people? and yet all are members of the Church under One Head (CHRIST).[2]" And further on, "Let us, against whom by a rash boldness a fault has been committed, observe what the Truth teaches, saying, 'If he shall refuse to hear the Church, let him be unto thee as an heathen man, and a publican.'[3]" And again, "I have omitted nothing which humility would have me to do, but since my rebuke is despised, it remains for me to apply the Church.[4]" In these passages S. Gregory is

[1] Te ipsum excidisti, noli te fallere. Dum enim putas omnes à te abstineri posse, solum te ab omnibus abstinuisti.—S. Cyprian, Ep. lxxv. p. 150.

[2] Certè Petrus Apostolorum primus, membrum Sanctæ et Universalis Ecclesiæ: Paulus, Andreas, Joannes, quid aliud quam singularium sunt plebium capita? et tamen sub uno capite, omnes membra sunt Ecclesiæ.—S. Greg. Epist. book v. ep. xviii. pp. 296, 298.

[3] Nos in quibus per ausum temerarium culpa committitur, servamus quod veritas præcipit dicens: Si Ecclesiam non audierit, sit tibi tanquam ethnicus et publicanus.

[4] Quidquid humiliter facere debui, non omisi; sed quia in meâ correptione despicior, restat ut Ecclesiam adhibere debeam.

addressing the above-mentioned Bishop, who would not yield obedience to the corrections which the Holy Pontiff administered to him, and accordingly he determines in the last place to denounce him to the Church. S. Gregory therefore understood these words of CHRIST, "*si te non audierit, dic Ecclesiæ,*" to have been said to Peter as well as to the other Apostles. Whence it follows that, after the tribunal of the Pope, there exists in the Church, by the institution of CHRIST, another superior and ultimate tribunal, before which even the Pope may denounce and be denounced. This is the Tribunal of the Church, which, with respect to Peter, consisted in the body of Apostles, with respect to Peter's successors, in the body of Bishops. And as this Tribunal must of necessity have jurisdiction, given by CHRIST, over all and each of those subjected to it, it follows that the spiritual power was more immediately given to the Church than to the Pope. Hence, the oldest scholastic Doctors always speak of the *Keys of the Church*, and not the *Keys of S. Peter*. Natalis Alexander in his History of the fourteenth and fifteenth centuries, Dissert. viii. No. liii. says, "The scholastics, after the Master of the Sentences and S. Thomas, always speak of the Keys of the Church, not the Keys of S. Peter, because they were delivered more immediately to the Church than to S. Peter, and were delivered to him as representing the Church. Whence the power of binding and loosing resides in the Church as *in subjecto proximo*, in Peter and his successors as *in subjecto remoto*.[1]"

This is strongly confirmed by the reflection that after CHRIST had said, in the singular number, "If he will not hear the Church, &c.," He immediately added, speaking in the plural, to all, "Verily, I say unto you, whatsoever ye shall bind on earth, &c.," denoting that the power of binding and loosing (which is the power of the Keys) was given by Him principally to the body of Apostles and of their successors, whom He calls *the Church*, as being the noblest part of Her.

I cannot here omit to bring forward the celebrated saying of

[1] Scholastici post Magistrum Sententiarum et S. Thomam claves Ecclesiæ semper appellant, non claves S. Petri: quia immediatiùs Ecclesiæ traditæ sunt, quàm S. Petro, illique commissæ sunt, ut Ecclesiæ personam gerenti unde ligandi solvendique potestas in Ecclesiâ tanquam in subjecto proximo residet, in Petro et ejus successoribus tanquam in subjecto remoto.—Nat. Alex. tom. viii. p. 527.

S. Augustine in his Epistle to Glorius, Eleusius, and others. "Let us suppose that those Bishops WHO HAVE GIVEN SENTENCE AT ROME were not good judges. STILL A PLENARY COUNCIL OF THE UNIVERSAL CHURCH REMAINED to annul their sentence if they had been convicted of wrong judgment."[1]

It seems that the Church of Rome herself intended us to understand the words of our LORD, referred to above, in this sense, when for many hundred years she ordered this Gospel concerning fraternal correction to be read or sung at Mass, on the Tuesday after the third Sunday in Lent. "At that time: JESUS, looking upon His disciples, said to Simon Peter, If thy brother sin against thee, &c.[2] . . . . . if he will not hear thee, tell it to the Church." In which the Church clearly confessed that the words "*tell it to the Church,*" were spoken by CHRIST to S. Peter equally with the other Apostles, showing that after the Tribunal of Peter there existed yet another and a greater Tribunal, viz. that of *the Church,* to which even Peter himself was ordered to denounce the incorrigible, and before which the successors of Peter, if incorrigible or scandalous, ought to be denounced by their inferiors.

The famous Paolo Sarpi, in his Apology for the Decrees of the Republic of Venice, 160 years ago, pointed out that in the modern Missals the wording of this Gospel had been changed, and, instead of the form given above, viz. "JESUS, looking upon His Disciples, *said to Simon Peter,* &c.,[3]" it was put thus, "JESUS said to His disciples, If thy brother, &c.," and so all the Roman Missals now have it. After Sarpi the same thing was noticed by the Theologians of Paris who, at the end of the last century, published the work entitled, *Not in censuram Hungaricam,* which is reckoned amongst the works of Richer.[4] Lest any of my readers should be inclined to doubt the fidelity or veracity

[1] Ecce putemus illos Episcopos QUI ROMÆ JUDICARUNT, non bonos judices fuisse. RESTABAT ADHUC PLENARIUM ECCLESIÆ UNIVERSÆ CONCILIUM, ut si male judicasse convicti essent, eorum sententiæ solverentur.—S. Aug. tom. ii. p. 97. Ep. 43, Class 2.

[2] In illo tempore: Respiciens JESUS in discipulos Suos dixit Simoni Petro, &c.

[3] Respiciens JESUS in discipulos suos, &c.—Sarpi, p. 101, 8vo. Ed. of 1673, Venice.

[4] Tous les Missels Latins dont on s'est servi jusqu'au Concile de Trente et en particulier celui dont on se sert encore aujourd'hui dans l'Eglise d'Auxerre, por-

of these writers, I declare that having examined the ancient Missals kept openly in the Royal Library of the Congregation of the Oratory of this Court, I found no fewer than seven, all printed long before the corrections of Clement VIII. and Paul V., in each of which the Gospel for the Tuesday after the third Sunday in Lent is given as Sarpi describes, and as we have said above, viz. "Respiciens JESUS in discipulos Suos dixit Simoni Petro : Si peccaverit in te, &c." The first is the Missal of the Diocese of Rennes, (Missale Redonense,) printed on parchment, at Paris, in 1492. The second the Missal of the Diocese of Utrecht, (Missale Trajectense,) printed at Paris in 1515. The third the Missal of the Diocese of Braga, (Missale juxta usum Almæ Bracarensis Ecclesiæ,) also on parchment, printed at Lyons in 1558, *Sumptibus Joan. a Burgundia Bibliopolæ Regis Lusitanorum,* (whence we may also learn that our Kings at that period had their own printers in France.) The fourth and fifth are Roman Missals, (*Missale Romanum summâ recensum diligentiâ,*) one printed at Venice, *apud Junctas,* in 1563 : the other at the same city, in 1564: both in folio. The sixth is entitled *Missale secundum morem Sanctæ Romanæ Ecclesiæ,* in octavo, printed in 1493, but I could not discover where. The seventh is that of the Diocese of Liège, (*Missale insignis Ecclesiæ Leodiensis,*) printed at Paris, in octavo, in the year 1500. The last two are bound in blue morocco. Another Missal of the Dominicans, which I found in a Library of the Court, agrees with those belonging to the Congregation of the Oratory; it was printed at Venice, *apud Junctas,* in 1590, with this title, "Missale secundum Ordinem Fratrum Prædicatorum, juxta Decreta Capituli Generalis Salmanticæ, A. D. 1551."

Let us now consider what it was which could have induced Clement VIII., or Paul V., thus to alter in the Roman Missal a Gospel which had been so universally read in the Church for so many years. I imagine that the correcters whom the Pope made use of for the work, amongst whom Cardinal Bellarmine was the first, perceiving that as the Gospel then stood, it mani-

tent expressement que c'étoit à Pierre, "*Respiciens Jesus . . . . . dixit Simoni Petro.*"—The Bishop of Auxerre, in the letter to the Bishop of Soissons, which is in the collection against the Bull *Unigenitus,* tom. liii. p. 106.

festly declared Peter, by CHRIST's teaching, to be inferior to the Church, and that his successors, by confirming that reading, must be inferred to confirm also the decree of the fifth Session of Constance, which declared the Popes to be subject to the laws of general councils; Bellarmine and his colleagues, I say perceiving that this Gospel read in this manner greatly stood in the way of the pretended monarchy of Rome, suggested to the Pontiff that the words *dixit Jesus discipulis Suis,* should thenceforward be substituted in all Missals for, *dixit Jesus Simoni Petro,* since in this reading the subordination of Peter to the Tribunal of the Church was not so clear and evident.

This correction of the Missal reminds me of another also remarkable, made for the same purpose, and which we may not pass over in silence. All the Missals and Breviaries of the present day give the Collect of the *Cathedra S. Petri* thus: "DEUS Qui B. Petro Apostolo Tuo collatis clavibus regni cœlestis ligandi atque solvendi Pontificium tradidisti, &c." But anciently the Breviaries had it thus: "DEUS Qui B. Petro Apostolo Tuo collatis clavibus regni cœlestis ANIMAS ligandi atque solvendi Pontificium tradidisti, &c." The Pope S. Leo IV. thus composed this prayer about the year 850, and so I find it in four Breviaries which I examined in the Royal Library of the Congregation of the Oratory, viz.: in that of the church of Liège, octavo, Paris, 1509: in that of Lyons, in France, printed by Jean Crespin, octavo, 1539: in that of Paris, entitled *Breviarium Romanum à Paulo Tertio recens promulgatum,* quarto, 1542: and in that of the Church of Braga, ordered to be printed there in 1634, by the Archbishop-Primate Rodrigo da Cunha, in octavo. And to show that the *Missals* agree with the *Breviaries,* the word *Animas* is preserved in the two Roman Missals printed at Venice, the Utrecht Missal, and in that of Liège, all of which we mentioned above, and also in a Roman Missal which I have received from another Library, printed at Venice, in folio, with this title, Missale Romanum ex decreto Sacrosancti Concilii Tridentini restitutum Pii V. Pontificis Maximi jussu editum, Venetiis apud Gratiosum Perchacinum, an. 1573: also in the ancient Book of Prayers used by the Church, which I have in my possession, printed in octavo, with this title, "*Orationes quæ in universali*

Ecclesiâ per totum mundum decàntantur, nunc denuo collectæ et ad unguem castigatæ. Apud inclitam Antiquariam. Anno M.D.LXXIII.

If now I am asked *why* this word *Animas* is erased from all the modern Missals and Breviaries, my answer is plain, because by saying *Animas ligandi atque solvendi*, it was implied that the power of the Keys extended only to the *soul*, and to the tribunal of conscience, and was merely *spiritual*: But the word *Animas* being withdrawn, room was given to extend the power of the Keys to the *bodies* of persons and to the *temporalities*, which is that indirect power over the estates of Kings and secular Princes which Bellarmine and the other Jesuits so earnestly aim at giving to the Pope.

It is the well-known practice of the Court of Rome to suppress all monuments, ancient or modern, which can in any way interfere with their new pretensions. To omit mention of other cases better known, they suppressed in the editions of the Council of Trent the vote of the three Bishops, who at the conclusion were of opinion that the Papal confirmation should not be asked, which Richer[1] clearly shows, comparing the Roman editions of the year 1564 with that of Paris in the same year, published by Gentian Hervet, a French Theologian at the Council; and with that which was published by Martinus Nucius, at Antwerp, in the same year. In 1660 they suppressed the edition of the ancient Roman Ritual entitled *Liber Diurnus Romanorum Pontificum*, which Lucius Holstenius had just finished: and they suppressed it, too, with such extreme assiduity that the Nuncio, Celio Piccolimini, most earnestly endeavoured to recover from the illustrious Marca, even *three leaves* of the impression sent by Holstenius from Rome to Paris, and in fact he *did* recover them by subtilty, as Baluze shows in the notes to the third edition of the books *de Concordiâ* (p. 55 of the Paris edition of 1704). The reason of such extreme diligence was this, that that Diurnal, which for many ages was the Ritual of Rome, contained, amongst other things, the oath taken by all the Popes to observe inviolably the Canons and Laws of the General Councils, the condemnation of Pope Honorius I. as a heretic, or favourer of the Monothelites, by the

[1] Richer, at the end of his Hist. p. 132.

Sixth Synod, and many other things which in ancient time passed into laws, but are now unpalatable to the Papal Chair. All however appears in the second edition of this Diurnal published at Paris by the Jesuit John Garnier, in 1680, from the MSS. which are preserved in France, and which I have often read.

XVIII. But to return now to our principal subject: No one has better explained the subordination of the Pope to the Church than the great S. Augustine, who teaches, at every step, that CHRIST gave all spiritual power to the *Church*, as the subject principally intended by Him, whether He spoke to S. Peter, or to the other Apostles. In the book *de Agone Christiano*, cap. xxx.: "Not without reason does Peter, amongst all the Apostles, sustain the character of this Catholic Church. For to this Church are the keys of the Kingdom of Heaven given when they are given to Peter; and when it is said to him, 'Lovest thou Me?' 'Feed My sheep,' it is said to all.[1]" In Treatise 124, upon S. John, *Tract.* 124: "The Apostle Peter on account of the primacy of his Apostleship, by a figurative generality, sustained the character of the Church. For as to what belongs to him properly, by nature, he was a man, by grace a Christian, by grace more abundant, he, one and the same, was made the first Apostle. But when it is said to him, 'I will give to thee the keys of the Kingdom of Heaven, &c.,' He intended the whole Church, which is built upon Peter, whence Peter had his name.[2]" And further on, "The Church which is founded upon CHRIST, received from Him the keys of the Kingdom of Heaven, in Peter, that is, the power of binding and loosing sins. For what the Church is in CHRIST *per proprietatem*, that same thing *per significationem* is Peter in the Rock: by which signification the Rock is understood to be CHRIST, and Peter the Church.[3]" In

[1] Non sine causâ inter omnes Apostolos hujus Ecclesiæ Catholicæ personam sustinet Petrus. Huic enim Ecclesiæ claves regni cœlorum datæ sunt, cùm Petro datæ sunt; et cùm ei dicitur, ad omnes dicitur, Amas Me, Pasce oves Meas.—S. Aug. tom. vi. p. 260.

[2] Ecclesiæ Petrus Apostolus propter Apostolatûs sui primatum gerebat figurata generalitate personam. Quod enim ad ipsum propriè pertinet, naturâ unus homo erat, gratiâ unus Christianus, abundantiore gratiâ unus idemque primus Apostolus. Sed quando ei dictum est, Tibi dabo claves regni cœlorum, &c., universam significabat Ecclesiam, quæ fundata est super Petram, unde Petrus nomen accepit.—S. Aug. tom. vi. p. 822.

[3] Ecclesia ergo quæ fundatur in CHRISTO, claves ab Eo regni cœlorum accepit

the 295th sermon, (which is the 108th in the old editions, *de Diversis*, No. 2.) "He was not the only one amongst the disciples entitled to feed the LORD's sheep, but when CHRIST speaks to *one*, unity is commended; and first of all to Peter, because Peter is the first of the Apostles.[1]" And in another place, "Peter alone merited to represent the whole Church. Because he alone represented the person of the whole Church he merited to hear, 'Unto thee will I give the keys of the Kingdom of Heaven.' FOR THESE KEYS, NOT ONE MAN, BUT THE UNITY OF THE CHURCH, RECEIVED.[2]" And again, "that you may know that the Church hath received the keys of the Kingdom of Heaven. . . . . Hear what is said to Peter, what to all the faithful, 'if he will not hear thee, tell it to the Church. Verily I say unto thee, whatsoever thou shalt bind on earth, &c." "The dove binds, the dove looses[3], that which is built upon Peter binds and looses." And in the 149th sermon, (by others cited as the 24th *de Diversis*,) Augustine writes, "Peter appears in many places of Scripture, because he personates the Church, especially in the place where it is said, 'I will give to thee the keys of the Kingdom of Heaven.' Whether then did Peter receive those keys and Paul not? did Peter receive them, and did not John and James receive them? But since in signification, Peter represented the person of the Church, that which was given to him alone was given to the Church. Peter, therefore, sustained the figures of the Church, —the Church is the Body of CHRIST.[4]"

in Petro, id est, potestatem ligandi solvendique peccata. Quod enim est per proprietatem in CHRISTO Ecclesia, hoc est per significationem Petrus in Petrâ, quâ significatione intelligitur CHRISTUS Petra, Petrus Ecclesia.—S. Aug. tom. vi. p. 822.

[1] Non inter discipulos solus meruit pascere Dominicas oves. Sed quando CHRISTUS ad unum loquitur, unitas commendatur: et Petro primitus, quia in Apostolis Petrus est primus.—S. Aug. Serm. 295. cap. 4, tom. v. p. 1195.

[2] Solus Petrus totius Ecclesiæ meruit gestare personam. Propter ipsam personam quam totius Ecclesiæ solus gestabat, audire meruit, Tibi dabo claves regni cœlorum. HAS ENIM CLAVES NOM HOMO UNUS, SED UNITAS ACCEPIT ECCLESIÆ . . ut noveritis Ecclesiam accepisse claves regni cœlorum . . . . audi quid Petro dicatur, quid omnibus Fidelibus sanctis: Si te non audierit, refer ad Ecclesiam. Amen dico vobis, quia quæ ligaveritis in terra, &c. Columba ligat, columba solvit, ædificium supra Petrum ligat et solvit.—Ibid. cap. 2, p. 1195.

[3] Ibid. cap. 2, p. 1195.

[4] Petrus multis locis Scripturarum apparet, quod personam gestet Ecclesiæ,

In this manner also, S. Cyprian speaks and S. Jerome, S. Leo I., the Venerable Bede, and others of the Fathers, as is set forth by Launoy, Book ii. Ep. 5 ; by Simon Vigor in the Treatise *de Monarchiâ*, near the beginning ; by Louis Dupin, in Dissert. vi. § 1.; and by Natalis Alexander, in the Hist. of the fifteenth and sixteenth Centuries, Dissert. viii. No. 53.[1]

XIX. From this doctrine of the Holy Fathers, good Theologians gather in the first place, that the *possession*, and so to speak, *dominion* of the spiritual jurisdiction is entirely in the *body of the Church*, and that the *use* and *exercise* of this jurisdiction is in the *Pope and Bishops* as the *ministers* or executors of the said Church. John Gerson, in his book concerning the methods of uniting and reforming the Church, cap. ii., says, "The Roman Church, whose head is believed to be the Pope, seems to be of far less authority than the Universal Church, and is, as it were, instrumental and operative in using the keys of the Universal Church, and executive as to the power of binding and loosing possessed by it.[2]" A little before Gerson had said, "To this Universal Church alone is the power of binding and loosing given. For supposing there were no Pope, any one of the faithful would nevertheless find in the Church the remedy of binding and loosing.[3]" And in his book concerning the Ecclesiastical power, Consid. xi. (at the beginning), "The Ecclesiastical power, in its plenitude, is in the Church, as in the end, and as in that which regulates the application and use of

maxime in loco, ubi dictum est, Tibi trado claves regni cœlorum, &c. Numquid istas claves Petrus accepit, et Paulus non accepit? Petrus accepit, Joannes et Jacobus non accepit? Sed quoniam in significatione personam Petrus gestabat Ecclesiæ, quod illi uni datum est, Ecclesiæ datum est. Ergo Petrus figuram gestabat Ecclesiæ, Ecclesia corpus CHRISTI est.—S. Aug. Serm. 149. § 7, p. 706.

[1] Launoy tom. v. Pt. 1. p. 213. Vigor. p. 10. Dupin. p. 379. Nat. Alex. tom. viii. p. 526.

[2] . . . . Ecclesia Romana, cujus caput Papa creditur, ... longe minoris auctoritatis videtur esse, universali Ecclesiâ. Et est quasi instrumentalis et operativa clavium universalis Ecclesiæ, et executiva potestatis ligandi et solvendi ejusdem.—Gerson, tom. ii. p. 163.

[3] Huic soli Ecclesiæ universali est potestas ligandi et solvendi tradita. Quia dato quod nullus Papa esset, adhuc aliquis fidelium, remedium ligandi et solvendi veniret. [So Pereira quotes the passage; but the last clause makes no sense. We have carefully examined the edition of Gerson's works printed in Paris in 1606, but cannot find the passage in question. We are therefore forced to read conjecturally solvendi [in Ecclesiâ in]veniret.—TRANSL.]

this plenitude of Ecclesiastical power, either by itself or by a General Council. Therefore, Augustine, with many others, says, that the keys of the Church were given not *to one* but *to unity*, and that they were given to the Church.[1]"

Lest any one should imagine this to be merely the doctrine of the French Theologians, hear what Cardinal Æneas Sylvius, a native of Sienna, afterwards Pope Pius II., says in his History of the Council of Basle, where, after quoting S. Augustine's exposition of our SAVIOUR's words to S. Peter, as in the first passage above, he goes on to say, "By which words the very foundation of our wranglers is shaken and altogether destroyed, since if Peter bore the person of the Church, we ought to ascribe the power of those words not to Peter but to the Church.[2]" Hear also Antonio di Rosellis, a native of Arezzo, in Italy, the Councillor of the Emperor Sigismund, and of Pope Eugenius IV., in the Book *de Monarchiâ*, Pt. iii. Cap. 26. "CHRIST appears to have founded the Church not upon Peter alone, but upon all the Apostles, according to the words of the Psalmist—'Her foundations are upon the holy hills.' If then the Church was not built upon Peter alone, *rather He built it upon all the Apostles;* although He founded it upon Peter as upon *one* significatively and figuratively, it was founded nevertheless upon all the Apostles, substantially, principally, and effectively, according to that of Augustine upon John, 'When Peter received the keys, he signified the Holy Church.' Whence it follows that, substantially and effectively, the power of the Keys is in the Church, and in Peter, significatively and substantially together with the others.[3]"

[1] Potestas Ecclesiastica in suâ plenitudine, est in Ecclesiâ sicut in fine et sicut in regulante applicationem et usum hujusmodi plenitudinis Ecclesiasticæ potestatis per se ipsam vel per generale Concilium . . . Propterea loquitur Augustinus cum aliis quibusdam, quod *claves Ecclesiæ datæ sunt non uni, sed unitati: et quod datæ sunt Ecclesiæ.*—Gerson, tom. ii. p. 253.

[2] Quibus ex verbis rabularum nostrorum fundamenta concutiuntur ac penitus evertuntur. Quoniam si personam Ecclesiæ Petrus ferebat, non Petro, sed Ecclesiæ potius vim illorum verborum debemus adscribere.—Æn. Sylvius in Pinson on the Pragmatic Sanction, p. 776.

[3] CHRISTUS Ecclesiam videtur constituisse non in solo Petro, sed in omnibus Apostolis, juxta verba Psalmistæ: Fundamenta ejus in montibus sanctis. Si igitur Ecclesia fuit constituta non in solo Petro, potius ipsam in omnibus Apostolis constituit, licet in Petro ut in uno significativè et figurativè, quæ tamen erat in omnibus Apostolis substantialiter, principaliter, et effectivè: juxta illud

Hear again the Fathers of the General Council of Pisa, in their convocatory Letter to the Antipope Pedro de Luna, in the year 1408. "The Keys were given by CHRIST to the unity of the Church.[1]" Hear the Cardinal Francis Zabarella[2], a Florentine, in the time of Pope John XXIII., in his Treatise on Schism, written a few years before the Council of Constance[3]: "Whence it appears that the saying that the Pope possesses the plenitude of power, &c." And again, further on, "The university of the whole Church could never so transfer the power itself to the Pope, that it should cease to be in its own power, because this would be contrary to Divine right, and against the example of the Apostles.[4]" Hear the famous Spaniard Affonso Tostado, Bishop of Avila, in the time of Eugenius IV., in Question 48, on the 15th Cap. of Numbers, "The Keys were given by CHRIST to the whole Church. But because the whole Church could not dispense them, being a community and not an individual person, He delivered them to Peter in the name of the Church.[5]" And further on, "The Keys were not given to Peter and to the other Apostles AS DETERMINATE PERSONS, BUT AS MINISTERS OF THE CHURCH; and then the Keys were given rather to the Church than to them.[6]" And in the following Question: "The Church received the Keys from CHRIST and the Apostles as the Ministers of the Church, and now the Church holds them and the Prelates also, but the Church otherwise than the Prelates. For the Church has them as to origin and virtue, but the Prelates as to their use. An example of this is afforded in the *owner* of a thing and him who enjoys the

Augustini super Joannem, Petrus quando claves accepit, Ecclesiam Sanctam significavit. Ex quo sequitur, quod substantialiter et effectivè potestas clavium est in Ecclesiâ, et in Petro significativè, et substantialiter unà cum aliis.—Rosellis, ed. of Goldastus, tom. i. p. 432.

[1] Hardt. tom. ii. p. 82.

[2] Zabarella, Ed. Argent. 1609, p. 559.

[3] See § X. above.

[4] Universitas totius Ecclesiæ numquam ita potuit transferre ipsam potestatem in Papam, ut desineret esse penes ipsam: quia hoc esset contra jus divinum, et contra exempla apostolorum.—Zabarella, p. 567.

[5] Claves datæ sunt à CHRISTO toti Ecclesiæ. Quia tamen non poterat tota Ecclesia dispensare illas, cùm non esset aliqua persona sed communitas, tradidit eas Petro nomine Ecclesiæ.—Abulens. tom. v. p. 357.

[6] Petro et aliis Apostolis non fuerant datæ claves, TAMQUAM DETERMINATIS PERSONIS SED TANQUAM MINISTRIS ECCLESIÆ: et tunc magis dantur claves Ecclesiæ, quam ipsis.

usufruct of it.[1]" Hear another Spanish Bishop of the same period, Andrew of Escobar, of the order of S. Benedict, Bishop of Megara, who, before he obtained the mitre from Nicholas V., was present among the Theologians at the General Councils of Constance and Basle, and whilst at the latter, wrote a very learned treatise on the government of Councils dedicated to Cardinal Julian, the President, and published towards the end of the last century, by Hermann de Hardt, in his history of the Council of Constance. In the first part of this treatise, Cap. ii, the Bishop says thus: "The plenitude of the Papal power was not given to Peter as Peter, but was given to the Universal Church, which was, *per significationem*, entire in Peter.[2]" And further on, "When Peter received the Keys, the whole Church rather received them *suppositaliter* in Peter, or through Peter, and Peter himself received the Keys, in a type, mystically and ministerially, from the Universal Church Herself. For the Keys, which the Church could not exercise universally by all, she desired should be exercised by Peter and his successors, in particular, and such is the mind of Jerome and Augustine, as they say, and I have written above.[3]"

Hear the unanimous opinion of the University of Cracow, upon the subject given by command of Ladislaus, King of Poland, in 1440. "This power according to the Apostle's doctrine in 1 Cor. xii. seems to be inherent in every member or in the whole body, and not in one member only. For the Apostle says, 'The body is not one member but many.' It appears therefore, that the Church's power of preserving, governing, and defending itself is in the body, or in all the members toge-

[1] Ecclesia suscepit claves à CHRISTO et Apostoli tamquam ministri Ecclesiæ: et nunc Ecclesia illas habet et Prælati etiam: sed aliter Ecclesia quàm Prælati. Nam Ecclesia illas habet secundum originem et virtutem: Prælati autem habent secundum usum earum. Exemplum hujus patet in domino rei et usufructuario.

[2] Plenitudo potestatis Papalis non fuit data Petro, ut Petro: sed fuit data universali Ecclesiæ, quæ erat per significationem tota in Petro.—Hardt. vi. pp. 147, 162.

[3] Quando Petrus claves accepit, has potius tota Ecclesia suppositaliter accepit in ipso Petro, sive per ipsum Petrum: et ipse Petrus claves accepit in typo, mysticè, et ministerialiter ab ipsâ Ecclesiâ universali. Claves enim quas Ecclesia non poterat per omnes exercere universaliter, voluit quod exequerentur per Petrum et ejus successores particulariter. Et ista est mens Hieronymi et Augustini, ut isti dicunt et superius scripsi.

ther, but not so that it should depend entirely upon one member.[1]" And again, "The Church is the mystical organic body of CHRIST, animated with the Faith of CHRIST: since therefore the Pope is not this body, (which is the Church,) but one of its members, according to the Apostle's doctrine, it follows that the Pope is a part of that body, and that the Church itself is a certain *whole:* but it is the common conception of the mind that every whole is greater than its part, therefore the Church, which is a whole, is greater and more excellent than the Pope himself.[2]"

Hear Cardinal Nicholas de Cusa, a German, Bishop of Brescia, in Italy, who flourished about the year 1450, in his second Book *de Concordantiâ Catholicâ,* Cap. xviii. "The power of binding and loosing, and infallibility and indefectibility, owing to CHRIST'S assistance, is in the true Catholic Church itself; but since the Roman Pontiff is a member of that Church which is the Body of CHRIST, and infallibility IS NOT PROMISED TO ANY MEMBER OF THAT CHURCH, BUT TO THE WHOLE CHURCH, there is no doubt that the indefectible power of the entire Church is superior to the power of the Roman Pontiff, although the power of the Church, and that of the Pope, flow from the same source.[3]"

Lastly, hear the Fathers of the General Council of Basle, in number about 300, in their reply to the messengers of Eugenius

[1] Hæc potestas juxta doctrinam Apostoli, 1 Cor. xii., videtur omnibus inesse membris sive toti corpori, non autem uni membro tantum. Dicit enim Apostolus, *Corpus non est unum membrum, sed multa.* Apparet igitur quod potestas Ecclesiæ se ipsam conservandi, regendi, et tuendi, insit corpori, sive omnibus membris simul, non autem quod ex unico membro dependeat in totum.—Hist. of the University of Paris, tom. v. p. 494.

[2] Ecclesia est corpus CHRISTI mysticum organicum fide CHRISTI animatum. Cùm ergo Papa non sit corpus hoc quod est Ecclesia, sed unum ex membris ipsius, juxta doctrinam Apostoli: sequitur quod Papa est pars istius corporis et ipsa Ecclesia est quoddam totum. Communis autem animi conceptio est, omne totum est maius suâ parte. Ergo Ecclesia quæ est quoddam totum, maior est et excellentior ipso Papâ.—Ibid, p. 502.

[3] Potestas ligandi et solvendi, et infallibilitas, et indeviabilitas, propter CHRISTI assistentiam, est in ipsa Catholica vera Ecclesia. Cùm autem Romanus Pontifex sit membrum illius Ecclesiæ, quæ corpus CHRISTI est: et infallibilitas NON CUILIBET MEMBRO, SED TOTI ECCLESIÆ PROMISSA EST: tunc non est dubium, quod potestas indeviabilis totius Ecclesiæ, est supra potestatem Romani Pontificis, quamquam ab eodem principio potestas tam Ecclesiæ quàm Papæ fluat.

IV., written in 1432. "If the Pope be the greatest in the Church, he is nevertheless not greater than the entire Church. Why these words, '*Tibi dabo claves regni cœlorum*,' were said to one, the holy Doctors explain to be that He might designate the unity of the Church; and it is for this reason that the commencement begins from unity, namely, that the Church of CHRIST might be shown to be *one:* and Peter, when he received the Keys, according to S. Augustine, signified the Church. . . . . FOR THE CHURCH HERSELF IS 'THE ONE CHIEF': AND THIS JURISDICTION IS GIVEN BY THE LORD TO THE UNITY OF THE FAITHFUL, NOT TO EACH, and He therefore willed it to begin from *one*, that He might designate its unity and unanimity.[1]" It is to be remarked, that this doctrine was published by the Fathers of Basle soon after the second Session, whilst they were still in union with Eugenius IV. and whilst Cardinal Julian presided, who had been nominated by Eugenius himself; whence Bellarmine in Book iii. *de Ecclesiâ*, Cap. xvi., confesses that until the twenty-sixth Session held in 1437, in which the Fathers refused obedience to the Pope, the Council was neither unlawful nor schismatical, and Eugenius had already declared the same thing in the Bull, *Salvatoris*, and in that *Exposcit debitum*, which are to be found at the beginning of the Council of Florence.

XX. In the second place, these Theologians gather this, that although the Papacy, as well as the Episcopate, is of Divine right, yet the Church, which consists of the congregation of all the Faithful, and which CHRIST principally looked to when He delivered to Peter and the other Apostles the Keys of spiritual power, this Church say they, which is as it were the *proprietor* of these Keys, of which the Pope and Bishops are the *ministers* and executors, may regulate and limit, (as in fact she has regulated and limited by means of her Canons,) the use and exercise of this spiritual power of her ministers, and may ordain, (as in

[1] Et si Papa maior sit in Ecclesiâ, non tamen maior est totâ Ecclesiâ. Uni autem quare dictum est, *tibi dabo claves regni cœlorum*, Sancti Doctores exponunt, ut unitatem designaret Ecclesiæ: et ideo exordium ab unitate proficiscitur, ut Ecclesia CHRISTI una esse demonstretur: et Petrus quando claves accepit, ut dicit Augustinus, Ecclesiam significavit. . . . . IPSA ENIM ECCLESIA UNUS EST PRINCEPS, ET UNITATI FIDELIUM, NON SINGULIS, HÆC JURISDICTIO A DOMINO CONCEDITUR: ET IDEO AB UNO INCIPERE VOLUIT, UT UNITATEM ATQUE UNANIMITATEM DESIGNARET.

fact she has ordained,) that the power of one or the other shall not exceed the prescribed limits, and that none shall intermeddle in the jurisdiction of others. John Gerson in the place referred to above, says: "The Pope, in good conscience, has not and cannot have greater authority or executive power than is granted to him by the Universal Church.[1]" And in the Sermon on Palm Sunday: "The Church or a General Council, although it cannot take away the plenitude of the Papal power supernaturally conferred by CHRIST, MAY NEVERTHELESS LIMIT THE EXERCISE OF IT BY CERTAIN RULES AND LAWS, for the edification of the Church, for which cause the Papal authority was conferred. And in this consists the firm foundation of all Ecclesiastical Reform.[2]"

Cardinal Peter d'Ailly, Bishop of Cambray, Gerson's master, in his Book, *de Auctoritate Ecclesiæ, Concilii Generalis et Papæ*, Part iii. Cap. i. says: "The plenitude of power is in the *Pope*, as in the subject receiving it, and ministerially exercising it: it is in the *Church*, as in the object causally and finally containing it: it is in a General Council AS IN THE EXEMPLAR REPRESENTING IT AND PROPERLY DIRECTING IT. For if the Pope should use this power for the destruction of the Church, the General Council is the exemplar or mirror representing the said Universal Church, and in her stead and in her name, coercing, regulating, and directing, abuses of this plenitude of power.[3]" And again in Cap. iv.: "It is to be granted both by human and Divine right, that the Pope can in many cases be

[1] Papa de rectâ conscientiâ non majorem habet, nec habere potest, auctoritatem et executionem potestatis, quam sibi ab universali Ecclesiâ conceditur.

[2] Ecclesia vel Generale Concilium, quamvis non possit tollere plenitudinem potestatis Papalis à CHRISTO supernaturaliter collatæ: POTEST TAMEN USUM EJUS LIMITARE SUB CERTIS REGULIS AC LEGIBUS in ædificationem Ecclesiæ, propter quam Papalis auctoritas collata est: et in hoc est totius Ecclesiasticæ reformationis stabile fundamentum.

[3] Plenitudo potestatis est in Papâ tamquam in subjecto ipsam recipiente et ministerialiter exercente: est in Ecclesiâ universali, tamquam in objecto ipsam causaliter et finaliter continente: est in Generali Concilio, TAMQUAM IN EXEMPLO IPSAM REPRÆSENTANTE ET REGULARITER DIRIGENTE.....Quia si Papa uteretur hâc potestate ad destructionem Ecclesiæ, Generale Concilium est exemplum vel speculum dictam universam Ecclesiam repræsentans, et ejus vice et nomine abusus hujusmodi plenitudinis potestatis coercens, regularis, et dirigens.—Ailly in Gerson, tom. ii. p. 951.

judged and condemned by the Universal Church, or by a General Council, and that in many cases an appeal may be made to a Council.[1]"

Thomas de Corcellis, Theologian of Charles VII. of France, at the Council of Basle, whom Eneas Sylvias calls "a man most wonderful in learning, and amiable," in a learned discourse which he delivered upon this subject in the Assembly at Bourges in 1440, said, (according to Pitheus, in Cap. xii. No. 4.) "The whole College of the blessed Apostles so acted, since after the declaration made in their Council at Jerusalem, they did not in the conclusion, say, 'it hath seemed good to Peter,' but 'it hath seemed good to the HOLY GHOST and to us,' nor did they say, 'it hath pleased Peter,' but 'it hath pleased the Apostles and Elders with all the Church.' Attributing to the HOLY SPIRIT and the whole Synod, the authority of what was then decreed.[2]"

Cardinal de Cusa, Book ii., *de Concor. Cath.* Cap. xxxiv., says, "Peter was not, owing to that Primacy, greater than the Church, since he himself was nominated by the Church and for Her sake, according to Augustine and other doctors. WHEREFORE THAT GREATNESS WAS NOT A GREATNESS OVER BUT IN SUBJECTION TO, THE CHURCH.[3]" And further on, "If on account of the Church Peter was called Peter from *Petra*, and the Church is but the congregation of the Faithful, the presidency is properly for the unity of the Faithful, and for the removal of schism; wherefore that is the Unity of the Faithful,

[1] Tam de jure humano quàm divino concedendum est, Papam posse ab universali Ecclesiâ vel à Generali Concilio in multis casibus judicari et condemnari, et ab eo ad Concilium multis in casibus posse appellari.—Ibid, p. 959.

[2] Totum Collegium Apostolorum beatorum ita practicavit, quoniam post declarationem habitam in suo Concilio Jerosolymitano, non dicebant sic in conclusione, *Visum est Petro*, sed *Visum est Spiritui Sancto et nobis:* nec dicebant ita *Placet Petro*, sed *Placuit Apostolis et Senioribus cum omni Ecclesiâ:* attribuentes Spiritui Sancto et toti Concilio auctoritatem ejus, quod ibidem decretum erat.—Pitheus, p. 472.

[3] Non fuit Petrus ex illo Primatu Ecclesiâ major: quoniam ipse ab Ecclesiâ et propter eam nominatur, secundum Augustinum et alios Doctores. QUARE ILLA MAJORITAS NON FUIT MAJORITAS SUPRA, SED INFRA ECCLESIAM. Unde licet os sive caput esset Apostolorum et Ecclesiæ, et ejus nomine proponeret et responderet: tamen nihilo minus tamquam membrum subfuit. Quare in medio fidelium surgens in reverentiam Ecclesiæ locutus est, et passus est se mitti in Samariam ab ipsa, Act. viii.—Cusa, p. 772.

for whose service and oversight the presidency is established over individuals; Hence the Unity of the Faithful, which we call the Church, or an Œcumenical Council of the Catholic Church, representing it, IS ABOVE ITS MINISTER AND INDIVIDUAL PRESIDENT.[1]" Cusa had before in Cap. xvii. of the same Book ii. written as follows, "What man with a sound mind can doubt that an Œcumenical Council, without any diminution of the true power and privilege of the Apostolic See, possesses power for its own preservation both against the abuse and the abuser? Whence it may be said universally, that an Œcumenical Council derives its power immediately from CHRIST, and is in every respect superior both to the Pope and to the Apostolic See. And many facts, Canons, and reasons prove this opinion.[2]"

The Bishop of Avila, Affonso Tostado, in his *Defensorium*, Part ii., Cap. lxix., says, "It is plain that the authority of the Church is greater than that of the Popes, since She can err neither in faith nor morals: but he may err in both, and the Supreme Pontiffs have often been found to err in both. For which cause also CHRIST APPOINTED THE SUPREME ECCLESIASTICAL TRIBUNAL IN THE HOLY SYNOD, SUPERIOR EVEN TO THE POPE.[3]"

The Bishop of Megara, Andrew of Escobar, in the Treatise referred to above on the government of Councils, Part vi., Cap. iii., writes thus: "A Council is not subject to *positive law*, since

[1] Si propter Ecclesiam Petrus à Petrâ dictus est, et Ecclesia non est nisi unio fidelium, recte propter unionem fidelium et obtollendum schisma præsidentia est. Quare unitas fidelium est illa, ad cujus servitium et observantiam præsidentia est super singulos. Hinc unitas fidelium, quam nos Ecclesiam dicimus, sive universale Concilium Catholicæ Ecclesiæ illam representans, EST SUPRA SUUM MINISTRUM AC SINGULAREM PRÆSIDEM.

[2] Quis dubitare potest sanæ mentis, universale Concilium absque diminutione veræ potestatis et privilegii Sedis Apostolicæ, tam in abusum, quàm in abutentem potestatem habere pro sui ipsius conversatione? quare universaliter dici potest, universale Concilium habere potestatem immediatè a CHRISTO, et esse omni respectu tam Supra Papam quam Supra Sedem Apostolicam. Et hanc sententiam probant plura gesta et Canones et rationes.

[3] Manifestum est auctoritatem Ecclesiæ esse majorem auctoritate Papæ: cùm illa non possit errare nec in fide nec in moribus: iste autem in utrâque errare potest, et sæpe repertum est, quod Summi Pontifices in utrâque erraverint. Ob hoc autem CHRISTUS CONSTITUIT SUPREMUM TRIBUNAL IN ECCLESIA IN SACRO CONCILIO ETIAM SUPRA PAPAM.—Abulens. tom. xxv. p. 138.

it possesses the plenitude of power, and exists immediately by Divine right, as hath been said. Which power of binding and loosing is in the very university of the universal Church. Which Church hath no superior but GOD, nor is it subject to positive law. Which Church also cannot transfer its entire power to the Pope to such an extent that it should cease to be under its own control: because this would be contrary to Divine right, and contrary to the example of the Apostles.[1]" Again, Part ix., Cap. i., "Whence it follows that it ought to be held and believed, simply and without addition, that the power of the Church is in every thing greater than that of the Pope in authority, in jurisdiction, in execution.[2]"

Dionysius the Carthusian, a Flemish writer also of the fifteenth century in his Treatise, *de Auctoritate Papæ et Concilii*, Art. 27, writes, "In these matters which properly and directly concern the Tribunal of the General Council, the Council appears to be superior to the Pope, so that the Council in giving its voices or votes is free, nor has the Pope any coercive power over it in such causes, and we are bound to stand by the decision of the General Council, rather than by that of the Pope.[3]" And in Art. 31, "Moreover their causes are the extirpation of heretical pravity and schism, the declaration of the faith, and the publishing of the symbol of faith, and the universal reform of the Church in its head and in its members: Therefore in the expedition of these matters, the power of a General Council is said to be greater than that of the Pope; since CHRIST promised to the Church, or to the Coun-

[1] Concilium non subjicitur juri positivo, cùm habeat plenitudinem potestatis, et sit à jure divino immediatè, ut dictum est. Quæ potestas ligandi et solvendi est in ipsâ universitate universalis Ecclesiæ. Quæ Ecclesia superiorem non habet nisi DEUM, nec subjicitur legi positivæ. Quæ Ecclesia etiam non potuit transferre suam potestatem in ipsum Papam totam, in tantum quod desineret esse penes eam. Quia hoc esset contra jus divinum, et contra exempla Apostolorum. —Hard. tom. vi. pp. 266, 301.

[2] Ex quibus sequitur, quod simpliciter, et sine additione debet teneri et credi, quod potestas Ecclesiæ in omnibus est major, quam potestas Papæ, in auctoritate, in jurisdictione, et in executione.—Carthus. tom. x. fol. 340. (Edit. Cologne, 1532.)

[3] In his quæ propriè ac directè spectant ad forum Generalis Concilii, Concilium videtur esse super Papam, ita quod Concilium dando voces suas seu vota, est liberum, nec Papa potestatem coercitivam habet super illud in hujusmodi causis, magisque standum determinationi Concilii Generalis quàm Papæ.

cil representing it, infallible guidance and ceaseless glorious assistance: whence even the Pope in such matters is bound to abide by the determination of the Church or the statutes of the Council, as being the ordination and sentence of the HOLY SPIRIT: AND SINCE THE POPE IS LIABLE TO ERR IN FAITH AND MORALS, AND IN OTHER THINGS NECESSARY TO SALVATION, IT DOES NOT SEEM THAT HIS JUDGMENT OUGHT TO BE FINALLY AND CERTAINLY RESTED UPON IN SUCH THINGS, SINCE it is neither an infallible rule nor an indefectible foundation.[1]" Such is the written judgment of one whom both on account of his rare virtues and his miracles, the whole Carthusian Order venerates with public worship, and to whom, for the same reason, the Bollandist Fathers have given a place amongst the Saints in the *Acta Sanctorum*, on the 12th of March.

XXI. Our Theologians gather in the third place, that since the whole power and authority of the Universal Church is in a General Council, which represents the Catholic Church, the limits of the Papacy and of Episcopacy being once prescribed and defined by a General Council, neither the Pope nor the Bishops may go beyond those limits, nor act in any way contrary to that which in matter of faith and morals has already been defined by a General Council lawfully convoked and held. This conclusion is formally defined by the General Council of Constance, in the decree of the fifth Session, thus: "First this Holy Synod of Constance declares that it, lawfully called together in the HOLY SPIRIT, forming a General Council and representing the Catholic Church, has its authority immediately from CHRIST, to which every person of whatever state or dignity, not excepting the Pope, is bound to yield obedience in matters relating to the faith, the extirpation of heresy, and the general reform of the

[1] Porro hæ causæ sunt extirpatio hæreticæ pravitatis ac schismatis, declaratio fidei atque editio symboli ejus, universalis reformatio Ecclesiæ in capite et in membris ejus. Itaque in expeditione istorum major dicitur potestas Concilii Generalis quàm Papæ. Quoniam CHRISTUS promisit Ecclesiæ seu Concilio ipsam repræsentanti infallibilem directionem et gloriosam assistentiam incessantem. Unde et Papa in talibus tenetur stare determinationi Ecclesiæ seu statutis Concilii tanquam ordinationi ac sententiæ Spiritus Sancti. CUM QUE PAPA POSSIT ERRARE IN FIDE ET MORIBUS, AC CÆTERIS QUÆ SUNT DE NECESSITATE SALUTIS, EJUS JUDICIO non videtur ultimate ac certitudinaliter standum in istis: cum non sit infallibilis regula, neque indeviabile fundamentum.—Carthus. tom. x. fol. 340. (Edit. Cologne, 1532).

Church of God in its head and in its members. It also declares that what person soever, of whatever condition, state, or dignity he may be, not excepting the Pope, shall contumaciously refuse to obey the commands, statutes, ordinances and precepts of this Holy Synod, or of any other General Council whatever, in the matters aforesaid, shall, unless he repent, be put to adequate penance, and be punished accordingly, &c.[1]"

XXII. This Council, with its definitions, was confirmed by Pope Martin V. in the forty-second Session, by the Bull, *Inter cunctas*, in which he directs the following questions to be put to those who have been converted from heresy: "whether he believes that each Œcumenical Council, and also that of Constance, represents the Universal Church?" which is one of the Articles defined in Session Five. "Also that what that Sacred Synod of Constance, representing the Universal Church, hath approved and approves in favour of the faith, and for the salvation of souls, is to be approved and held by all the faithful of Christ.[2]" And he does not seem to doubt that every thing defined in Session Five, was agreeable to the Faith and to good morals; and that this decree speaks not only of times of schism and the like, but of all times, clearly appears from these words of the Council: "of this Holy Synod, and of every other General Council."

That the confirmation of Martin V. extends to those decrees which were published by the Council *before* his election, as well as to those which were published after, appears clearly from the

[1] Primo declarat hæc Sancta Synodus Constantiensis, quod ipsa in S.S. legitime congregata, Generale Concilium faciens et Ecclesiam Catholicam repræsentans, potestatem à Christo immediatè habet, cui quilibet cujuscunque statûs vel dignitatis etiamsi Papalis existat, obedire tenetur in his, quæ pertinent ad fidem et extirpationem schismatis ac generalem reformationem Ecclesiæ Dei in capite et in membris. Item declarat quod quicunque cujuscumque conditionis statûs vel dignitatis etiamsi Papalis existat, qui mandatis, statutis, seu ordinationibus et præceptis hujus Sanctæ Synodi et cujuscumque alterius Concilii Generalis super præmissis, seu ad ea pertinentibus obedire contumaciter contempserit, nisi resipuerit, condigne pœnitentiæ subjiciatur ac debite puniatur.—Hardt. Hist. of Constance, tom. iv. p. 98.

[2] Utrum credat quod quodcunque Concilium Generale, et etiam Constantiense, universalem Ecclesiam repræsentet? Item quod illud quod Sacrum Conc. Constantiense, Universalem Ecclesiam repræsentans, approbavit et approbat in favorem fidei et ad salutem animarum, quod hoc est ac universis Christi fidelibus approbandum et tenendum.—Hardt. Hist. of Conc. of Constance, tom iv. pp. 1527, 1548.

Bull, *Cupientes*, passed in the forty-fourth Session, in which he confesses himself to be obliged to observe the Chapter, *Frequens*, enacted in the thirty-ninth Session, before his election to the Papal Chair. These are his words: "Desirous and willing to satisfy the decree of this General Council, which enacts amongst other things, &c.[1]" And again in the Bull, *Nuper*, he says, "Desirous that a General Council should be celebrated according to the deliberation and ordinance of the Holy Synod of Constance.[2]" And a third time in the Bull, *Dum onus*, "The Sacred General Synod of Constance hath lately decreed, &c.[3]" Which proves also that the decrees of Constance hold good beyond the time of the schism. That this Confirmation extends equally to the decrees passed by the Council after the union of the three obediences, and to those which preceded the union, is as clearly shown by the same Bull of confirmation, *Inter cunctas*, in which Martin directs that it be believed and held that the sentences pronounced in the eighth Session against Wiclif, and in the fifteenth against Huss, were lawful and just, and the sentences of a General Council. "Whether he believes the said sentences of condemnation to have been lawfully and justly passed by the Sacred and General Council?[4]" Whilst it appears from the Acts, that the obedience of Gregory XII. did not unite itself until the twelfth Session, and that of Benedict not till the twenty-second Session.

XXIII. No one will allege that these decrees of the fifth Session of Constance were annulled or disallowed in any dogmatical Bull or solemn declaration of any subsequent Pope. On the contrary, Eugenius IV. in the Bull, *Moyses*, in which he condemns the latter Acts of the Council of Basle, (viz. those which followed the transfer of the Council to Ferrara in 1437,) urges the authority of the Council of Constance against the Fathers of Basle, as of a General and irrefragable Council: "The evil sense of the Basileans, shown by their deeds, we condemn,

1 Cupientes et volentes decreto hujus Generalis Concilii satisfacere inter alia disponenti, quod, &c.

2 Cupientes Generale Concilium juxta deliberationem et ordinationem Sanctæ Synodi Constantiensis celebrari.

3 Dudum Sacrum Generale Constantiense Concilium statuit et decrevit, &c.

4 Utrum credat quod dictæ condemnationes per Sacrum Generale Concilium ritè et justè factæ sunt.

as contrary to the sense of Holy Scripture, the Holy Fathers, AND ALSO OF THE COUNCIL OF CONSTANCE ITSELF.[1]"

XXIV. And to show the unreasonableness with which Bellarmine, Duval, Justiniani, and others of the Papal Court object to us this decree, *Moyses*, as if it were a solemn condemnation of the decree of Constance, it should be remarked that many years after (*i. e.* in 1448, when Nicholas V. having been elected lawful successor to Eugenius IV. the Christian Princes, with Charles VII. of France, treated of the cession to be made by the Anti-Pope Felix V.) one of the points contained in the instructions given by the Electors of Germany was this: "The King of the French shall insist that Pope Nicholas V. shall receive, embrace, and venerate the Council of Constance, the Decree *Frequens*, and its other decrees, together with the other Councils representing the Catholic Church, and their power, honour, and eminence, as OTHERS HIS PREDECESSORS have done.[2]" The Anti-pope Felix ceded the Pontificate, protesting in the letters of cession, which Raynaldus has given, that the definition made in the fifth Session of Constance, was a definition "never by any means to be forgotten.[3]" And the Bishops at the Synod of Lausanne, who had hitherto been supporters of Felix, declared that they recognized Nicholas V. as true and sole Pontiff, "understanding upon good authority that he believes and holds the same truth for the preservation of the authority of the Holy Synods which was defined and declared in the Holy Synod of Constance, renewed in the Holy Synod of Basle, and received by all Prelates, Kings, Princes and Universities throughout the world.[4]" Upon these conditions peace was concluded, and

[1] Pravum ipsorum Basileensium sensum, quem facta demonstrant, velut Sacrosanctæ Scripturæ et Sanctorum Patrum, ET IPSIUS ETIAM CONSTANTIENSIS CONSILII sensui contrarium damnamus, &c.

[2] Instabit Dominus Rex Francorum, quod S. D. Nicolaus Papa V. Concilium Constantiense, Decretum FREQUENS, et alia ejus Decreta, sicut cætera Concilia Catholicam Ecclesiam repræsentantia, ipsorum potestatem, honorem, et eminentiam, SICUT ET CÆTERI antecessores sui, suscipiet, amplectetur, et venerabitur.

[3] Nulla unquam oblivione delenda.—Rayn. A.D. 1449, No. iii. p. 531.

[4] Fidâ relatione intelligentes, ipsum eandem credere et tenere veritatem pro conservandâ auctoritate Sacrorum Conciliorum IN SACROSANCTA SYNODO CONSTANTIENSI DEFINITAM ET DECLARATAM, in Sacro Basileensi Concilio renovatam, nec non à Prelatis, Regibus et Principibus, Universitatibusque Orbis susceptam, &c.

Nicholas admitted his competitor Felix into the College of Cardinals; and not satisfied even with this, he annulled by the Bull, *Tanto nos*, all the sentences and processes which his predecessor Eugenius IV. had published against the Fathers at Basle. The fifth Session of Constance cannot then be looked upon as condemned: on the contrary, it ought rather to be regarded as approved by the Sovereign Pontiffs. Now let us go on to detect the falsity of the other imputations which the four Cardinals Torquemada, Cajetan, Bellarmine, and Orsi make against it.

XXV. All of them urge as an invincible argument that, in the fifth Session at Constance, only the Cardinals and Prelates in the obedience of John XXIII. were present, who, they say, did not represent more than a third of the Church, those Cardinals and Prelates being absent who still adhered to the two Anti-popes Gregory XII. and Benedict XIII. Now it should be remarked that, besides the Cardinals, there were in Constance at that time, some two hundred Bishops from Germany, England, Poland, Sweden, Norway, Denmark, Hungary, Bohemia, France, Flanders, and the greater part of Italy, the Prelates of the order of S. Benedict, of the Carthusians, Premonstratensians, Cistercians, Dominicans, and Franciscans, deputies, and innumerable Doctors from the Universities of Paris, Bologna, Vienna, Cracow, Oxford, and Prague, the Emperor Sigismund, and the ambassadors of nearly every one of the above-mentioned kingdoms. Bellarmine, then, calls all this multitude *the third part* of the Church, when Benedict XIII. was obeyed only by Castille, Aragon, and Navarre, (for Portugal acknowledged John,) and Gregory XII., by the Scotch, by the Apulians, in the kingdom of Naples, and by a few other insignificant communities. But Benedict and Gregory had already, five years before, been declared Anti-popes by the General Council of Pisa, in which, besides an immense number of Prelates of all nations, the Cardinals of all three obediences concurred; so that it was after the Council of Pisa that the Spaniards continued to acknowledge Benedict, and the Scotch and a few others Gregory. But more than this, all parties were invited, and by a true Pope, viz. John XXIII., to come to Constance, and all shortly after did in fact, come and join the Council; that is to say, those

in the obedience of Gregory in the twelfth Session, and those of Benedict in Sessions 22, 26, and 35, nor does it appear that any of them in any way opposed the decrees of the preceding Sessions.

But supposing they had not united themselves, or had opposed the decrees, it could not be in reason, that five or six shreds of Christendom, which all together did not make up a fifth of those who originally met at Constance, and which being invited refused to come, GOD knows with what conscience, should or could by their absence or contumacy, deprive of their vigour and authority decrees determined upon and promulgated in a public Session by the Prelates of so important Catholic countries, of which Germany alone was greater than all Spain and Scotland put together. Otherwise Bellarmine must confess that CHRIST, under those circumstances, had forsaken His Church, and taken from Her, or denied Her the strength necessary to resist the heresies and schisms which agitated Her. He must also confess that the Council of Ephesus was not Œcumenical, owing to the absence of the Bishops of the Patriarchate of Antioch, who were more than forty. And he must confess that the Council of Florence was not Œcumenical, as all the Prelates who were at the time at Basle, were absent from it even when Eugenius promulgated the famous Decretal *Moyses*.

XXVI. But, say the four Cardinals, when the fifth Session was held, the Pope was not present, having suddenly fled from Constance to Schaffhausen. Granted: nevertheless, the whole Council asserted and defined that the Universal Church was represented in it, and this its definition was subsequently confirmed by Martin V. in his Bull, *Inter Cunctas;* and the whole Council, nevertheless, proceeded to cite, try, and, ultimately, to condemn the Pope as scandalous and incorrigible, and as by his flight, an abettor of schism: and the Pope himself, nevertheless, regarded himself as deposed, and Martin V. was elected in his place, whom none doubt to be a true and lawful Pope, and the whole Council, nevertheless, long before the election of Martin, continued to censure and condemn in Session 8, the errors of Wicliff, and in Session 15, those of Huss. And in Session 42, Martin defined, in the same Bull, that those condemnations were, and ought to be, regarded as lawful and just,

"That the said condemnations were rightly and justly made by the Holy General Council.[1]" Where it should be remarked that the Pope calls it *a General Council,* in the 8th and 15th Sessions, notwithstanding the absence of John and the partizans of Benedict. And if these things are so, to which are we to give credit, to the Council or to Bellarmine? to the Pope or to the Cardinal?

XXVII. But Bellarmine and Orsi go on to say, that although the definitions of the Council were lawful as far as concerned the errors of Wicliff and Huss, those of the fifth Session were not so, because the definitions were made without previous examination. So far will prejudice carry men! In this way, heretics might elude the force of any definition of the General Councils, saying that the decree was made without previous examination, and no Canon or Decree whatever could stand, and all would totter. Add to this, that there is no proof whatever, that the matter proposed in the fifth Session had not been previously well sifted and weighed, and upon this matter it is enough to look at the importance of the subject, and the circumspection and prudence of the two hundred Bishops, and the innumerable Doctors in Theology and Canon Law, who were present and voted. The more so as one of them, the chief, the most learned and the most pious, Gerson, in his treatise *de Potestate Ecclesiasticâ,*[2] Consid. xii., written two years afterwards, expressly affirms, that the definition of the fifth Session is a truth drawn from Theological principles clearer than light itself, "*post declarationem ex Theologica principiis luce clariorem*"; and he would not have given it such a name had not those principles been beforehand well known and weighed.[3] And in fact, they had been already well weighed in the year 1381, amongst others by the celebrated German Doctor, Henry de Langenstein, in his "*Consilium Pacis,*" Chapter 13, and by another Doctor of Sorbonne, Peter Plaoul, in a discourse which he made before the Council of Pisa, in the thirteenth Session, according to Hardt.[4] In the sermon on S. Antony preached

1 Quod dictæ condemnationes per Sacrum Generale Concilium ritè et justè factæ sunt.

2 Gerson, tom. ii. pp. 247, 355.

3 Gerson, tom. ii. p. 824.

4 Hardt, tom. ii. p. 29.

before the Council of Constance, Gerson writes that this is a decision, "most clear and solid, and built upon the rock of Holy Scripture," where CHRIST saith to Peter, "*Si te non audierit,*" &c. Gerson had also proved and illustrated this same doctrine by weighty proof from Scripture and tradition, before the celebration of the fifth Session at Constance, viz. in 1408, at the conference with the deputies of the University of Oxford, which begins "*Congratulatur vestræ devotioni,*[1]" in the year 1414, in his treatise upon the method of uniting and reforming the Church, which begins, "*Dolentes quærebamus te,*[2]" and in the year 1415 in a sermon delivered before the whole Council, shortly after the flight of the Pope, which begins, "*Ambulate dum lucem habetis.*[3]"

The same Gerson, in another sermon preached in the seventeenth Session of Constance, *pro viagio Regis Romanorum,* attests that his master, the Cardinal d'Ailly (who was present at the Council), had published several treatises on the subject before the fifth Session; "Upon this error and scandal, the most Reverend Father, the Lord Cardinal of Cambrai, my celebrated master, wrote, BOTH LONG AGO, AND LATELY, BEFORE THIS CONSTITUTION WAS MADE.[4]"

Finally, Theodoric of Niem, who wrote the Life of Pope John XXIII., and was himself present in the Council of Constance (where also he died), in Book ii., Chapter 8, after mentioning that certain of the Cardinals had pretended that the Council was dissolved by the withdrawal of the Pope, immediately adds, that many of the most profound theologians and Fathers present most strongly opposed this doctrine: "And it was sharply answered them by many in the Council, men of great authority and learning, THAT THE POPE WAS NOT ABOVE THE COUNCIL, BUT SUBJECT TO IT.[5]" In fact it appears from the Acts themselves, that the question of the authority of the Council over the

[1] Gerson, tom. ii. p. 123. [2] Ibid. p. 161. [3] Ibid. p. 201.

[4] Scripsit super hoc errore vel scandalo Reverendissimus Pater Dominus, Cardinalis Cameracensis, Præceptor meus inclytus, DUDUM ET NUPER ANTEQUAM FIERET HÆC CONSTITUTIO.

[5] Et eis responsum fuit acriter per plures de ipso Concilio viros magnæ auctoritatis, et scientificos: scilicet, QUOD PAPA NON ESSET SUPRA CONCILIUM, SED ESSET SUB CONCILIO.—Hardt, tom. ii. p. 398.

Pope had been already considered and weighed both by the Fathers and theologians, amongst whom those of the University of Paris made, as they everywhere did, the first figure.

This alone were enough to expose the shufflings of Orsi and Bellarmine, and to show the care and deliberation with which the Fathers of Constance drew up and published the Decree of the Fifth Session. But as we write in a country in which Ultramontane opinions are, for want of instruction, deeply rooted, I shall dwell somewhat longer upon the subject, in demonstrating how great account all ought to make of the decision of so celebrated a Council as that of Constance.

XXVIII. That this Decree was received throughout the fifteenth century, in which the Council of Constance was held, by the Bishops and Theologians of all Christendom, as a dogmatical decree or fundamental rule of the whole spiritual power of the Church, in respect to all and every Pope, and to all and any times and circumstances, is a fact which is in every way evidenced by the writers of that time, who either were present at the Council or flourished a few years after. Among those present, the Cardinal Bishop of Cambray, Peter d'Ailly, holds the first place, who in his treatise, "*de Auctoritate Eccl. Conc. Generalis et R. Pontificis,*" written at Constance a year and a half after the celebration of the fifth Session, writes thus, in Part iii., Chapter 2: "This conclusion" [he is speaking of the power of the Council over the Pope in other cases than that of heresy] "was, in the condemnation and deposition of John XXIII., carried out in practice by this Council General, whose determination may not be spoken against.[1]" And again, in Chapter 3, he calls the contrary doctrine *erroneous*, on the ground that it opposes the Decrees of Constance, "Præmissam opinionem erroneam esse, satis patet ex actis in hoc Sacro Concilio."

The second place belongs to John Gerson, who in many of his works alleges and describes the Decree of Constance, in so many words, as a rule of the Catholic Faith, viz., in his treatise,

[1] Hæc conclusio in condemnatione et depositione Johannis Papæ XXIII. practicata est per hoc Concilium Gen. cujus determinationi contradicere non licet.—Gerson, tom ii. pp. 951, 956.

"*de Potest. Eccl.*," Consid. iv.[1] (which Treatise was publicly read in Session 26), in his Sermon, "*pro Viagio Regis Romanorum,*" preached two months after the publication of the Fifth Session; in the Sermon on S. Antony preached two years after the celebration of the same Fifth Session; and in the treatise, "*An liceat in causis fidei à Summo Pontifice appellare,*" written three years after the same Session.

The celebrated Spanish Theologian, of the Benedictine Order, Andrew of Escobar, Bishop of Megara, holds the third place, who, in his book on the *Government of Councils*, after saying that he was present at Constance at the publication of the Decree of the Fifth Session, April 6, 1415, and that he preached on that day before the Council, declares that this Decree was promulged and defined in the Synod by the consent, permission, and command of all the Fathers present:—"All the Cardinals of the Holy Roman Church being present, with many Archbishops, Patriarchs, Bishops, and Prelates, the Ambassadors of various Princes and the most illustrious Prince the Lord Sigismund, King of the Romans, by consent, vote, and command of all, the Holy Council of Constance promulged, and caused to be promulged and defined, this perpetual Statute in the Fifth Session, &c.[2]" He further affirms that this Decree ought to be preached, written of, and promulgated as an article of the Catholic Faith, and that although only three cases are mentioned in which a General Council is superior to the Pope, viz., the cases of schism, faith, and the reformation of the Church in its head and in its members, yet this was not done to restrain the Council in any way in its power over the Pope, but in order to declare by the specification of these three cases, the universal power of the Council over the Pope, since all the cases of this superiority are comprehended under the three expressed in the Decree of Constance. "This Decree concerning the power of Councils, affirmed and decreed in the Holy Councils of Constance and Basle, ought to

[1] Gerson, tom. ii., pp. 231, 275, 303, 355.

[2] Præsentibus omnibus Cardinalibus S.R.E., et multis Archiepiscopis, Patriarchis, Episcopis, et Prælatis, ac diversorum Principum Ambassiatoribus, et illustrissimo Principe Domino Sigismundo Romanorum Rege, de consensu omnium, beneplacito et mandato, Sacrosanctum Concilium Constantiense promulgavit et promulgari fecit et definivit hoc perpetuum statutum in quintâ Sessione, &c.—Hardt, tom. vi. pp. 153, 4.

be so preached often by the Holy Synod, and perpetually written and promulgated, that all faithful Christians may be taught to believe it as firmly and without doubt as they believe any article of faith, &c.[1]" And further on: "Whence it follows that absolutely and without addition it ought to be held and believed that the power of the Church is in all things greater than the power of the Pope, in authority, in jurisdiction, and in execution.[2]" And again, reflecting on the terms or form of the Decrees:—"In the two Decrees of the Council of Constance is comprehended whatever is to be corrected, reformed, or amended, in the Clergy, in Christian people, and in the Roman Pontiff. For three gradations are made in it, in which the Pope is subjected to the Council, and inferior to it:—First, that he is subject in matters of faith and reformation; secondly, he is subject in all things relating to faith and reformation; thirdly, he is subject in all things relating to things relating to faith and reformation. And this gradation is of such great extent, that it is scarcely possible to conceive anything which is not comprehended in it.[3]"

XXIX. This document is of the greatest weight in the matter before us, being the work of so grave a divine, who was himself present in the Council, and of a Spanish theologian: it at once demolishes all the contrivances by which Cajetan, Bellarmine, and Orsi endeavoured to destroy the authority of the Decrees of Constance. For it shows clearly that although the

[1] Hoc Decretum de potestate Conciliorum affirmatum et decretatum in Sacris Conciliis Constantiensi et Basileensi, debet ita per Sacra Concilia sæpius prædicari scribi perpetuo et promulgari, quod præcipiatur cunctis fidelibus Christianis æque firmissime et sine dubitatione credi, sicut creditur aliquis articulus fidei, &c. —Hardt, tom. vi. p. 300.

[2] Ex quibus sequitur, quod simpliciter et sine additione debet teneri et credi, quod potestas Ecclesiæ in omnibus est major quàm potestas Papæ, in auctoritate, in jurisdictione, et in executione.—Hardt, tom. vi. p. 316.

[3] In Decretis duobus Concilii Constantiensis comprehenditur quidquid est corrigendum, quidquid est reformandum, quidquid est emendandum in Clero, in populo Christiano, et in Pontifice Romano. Quià ponuntur in eis tres gradus, in quibus Papa subjicitur Concilio et est inferior eo. Primò quod subjicitur in his quæ sunt fidei et reformationis cujuscumque. Secundò subjicitur in his omnibus quæ pertinent ad fidem et reformationem. Tertiò subjicitur in pertinentibus ad pertinentia ad fidem et reformationem. Et hic gradus est tantæ extensionis quod vix excogitari potest, quod non sub ipso comprehendatur.

Spaniards were not present at the time of the celebration of the Fifth Session, yet after the Anti-pope Benedict, whom they recognized, had been deposed by the Council, they agreed with all other nations in the decrees and definitions which had been made and promulgated in the Council. It is clear that the Decree of the Fifth Session is not to be understood merely of times of schism, or when there are doubts about the possessor of the Papal Chair, but *of all times whatever*, and even when the Pope at the time governing the Church of God, is alone and indubitable. It is clear that these clauses in the Decree, "in his quæ pertinent ad fidem et extirpationem schismatis et reformationem universalis Ecclesiæ in capite et in membris," are not *restrictive* but *explicative* clauses, and that they comprehend every case in which a General Council may deem it necessary to exercise its power over the Pope for the good of the Church. Lastly, it is clear that the Decree was promulgated in the presence of all the Cardinals, with the unanimous consent, approval, and command of the Fathers present, and that consequently this is one of the Decrees which Martin V. confirmed when, in Session 44, he protested in public Consistory, that he approved and ratified every thing that had been promulgated by the Council, *Conciliariter*, that is, in a public Session and by the unanimous vote of the Council.

XXX. I will observe lastly, that had the illustrious Bossuet known of this record of the Bishop of Megara, he would undoubtedly have alleged it in his favour, for it is most weighty and conclusive; but at the end of the last century, when Bossuet wrote his "Defence of the Declaration of the Clergy of France," it was but little known to men of letters, for in fact then it was that Hermann Vander Hart first printed it in Germany, from the MSS. of Helmstad, which had hitherto been locked up in libraries. Many years before, however, D. Nicholas Antonio, in his "Library of ancient Spain," had noticed the existence of this work in MS. in the Vatican, and that it would have been well if Labbe had brought it to light in his collection of Councils. It is from this same Nicholas Antonio, that I learned the surname of *Escobar*, which I have given to this famous Spaniard, instead of naming him Andrew, "*Episcopus Magorensis*," as Hardt always does, and after him, Justinus

Febronius, but Andrew of Escobar, Bishop of Megara (*Episcopus Megarensis*), a city of Achaia, between Athens and Corinth, of which I imagine he was titular Bishop.

XXXI. Many of the Fathers of Basle, who were the same that sixteen years before had been present in the Council of Constance, hold the fourth place as to the understanding of its Decrees. Amongst them were the Archbishops of Bourges and Lyons and the blessed Louis of Cambray,[1] who was made Cardinal by Martin V., and afterwards canonized by Clement VII. In their Second Session, A.D. 1432, (which no one can doubt to have been lawful and œcumenical, and recognized as such by Eugenius IV. in the bull, "*Dudum Sacrum*,") the Fathers of Basle alleged the Decrees of Constance as the fundamental rules of all reformation in the Church: and this, too, at a time when Eugenius was the sole and undoubted Pope, and when his Legate, Cardinal Julian, was presiding in the Council, who had also been present at Constance. Eugenius, then, desiring to dissolve the Council, and to hold another at Bologna, the Fathers of Basle strongly opposed it, always protesting in their Synodal manifestoes, that the Decrees of Constance being, as they ought to be, in force, the Pope could not dissolve the Council of his own will, but ought rather to submit himself to its determinations. In one place they say, "Who can now doubt of the power of the Council over all other powers, proved as it is by so many irrefragable testimonies? From which it clearly appears that the authorities which ye allege of the supreme power of the Pontiff do not prove that the Pontiff himself is not bound to obey the commands of the Universal Church and of a General Council. But they merely prove this, that all men individually and particular Churches ought to obey the Pontiff, except in such things as may be to the prejudice of this Holy Synod or of any other lawfully assembled. For even if he be the Ministerial Head of

[1 Commonly called the *Cardinal of Arles*, of which See he was Archbishop. He presided at Basle at the time when Eugenius IV. issued his Bull for transferring the Council to Ferrara, in Sept. 1437, and resisted him and continued to preside at Basle, for which he was excommunicated; subsequently, when Felix V. in 1449, renounced the Papacy, Eugenius received him again into Communion. After his death, he was, for his many virtues and miracles said to have been wrought by him, canonized; his festival being appointed for the 16th of September, the day on which he died.—TRANSL.]

the Church, yet he is not greater than the whole Church, otherwise when the Pontiff erred, as often hath happened and may happen again, the whole Church would err, which cannot be.[1]" Again they say, "CHRIST in saying, 'If thy brother sin against thee, tell it to the Church,' comprehends all men, and that Peter and his successors are included in that authority Paul shows, who resisted Peter to his face before them all. For he seems to have spoken to the Church, who spoke before all.[2]" We know very well that Eugenius IV., seven years after, that is, in 1439, condemned the Acts of Basle by the bull *Moyses*. But *what Acts?* The bull itself specifies that they were those which were *subsequent* to the translation of the Council to Ferrara in 1437.

XXXII. Amongst those who although not present at the Council of Constance wrote upon the subject within a few years after, we have Cardinal Cusa, Bishop of Brescia, and Canon Regular of S. Augustine, who writes thus in Chapter 17 of the second Book "*de Concordantiâ Catholicâ*":—"From this it is manifest that a General Council is absolutely superior to the Pope, nor is there any longer need to bring forward examples of this, since we have various decrees of the Holy Council of Basle, and even of Constance, how the Pope may be said to be subject to Councils. And although the Council of Constance speaks only in three cases, it is clear that all Canons made or to be made are reduced to them.[3]" And in Chapter 20:

[1] Quis jam de potestate Concilii super omnes alias potestates ambigere poterit, tot irrefragabilibus testimoniis comprobata? Ex quibus manifeste constat auctoritates quas de summi potestate Pontificis allegastis, non probare quominus ipse Pontifex mandatis universalis Ecclesiæ et Concilii Generalis obedire teneatur. Sed id dumtaxat probant, quod omnes singulares homines particularesque Ecclesiæ, ipsi Pontifici obedire debent, nisi in iis quæ huic Sacræ Synodo et cuilibet alteri legitime congregatæ præjudicium generarent. Nam et si sit caput ministeriale Ecclesiæ, non tamen est major tota Ecclesia; alioquin errante Pontifice, sicut sæpe contingit et contingere potest, tota erraret Ecclesia, quod esse non potest.

[2] Hoc quod dixit CHRISTUS, *Si peccaverit in te frater tuus, dic Ecclesiæ;* omnes homines comprehendit. Et quod Petrus et ejus successores illâ auctoritate comprehendantur, ostendit Paulus, qui in faciem restitit Cephæ coram omnibus, &c.

[3] Manifestum est ex his, universale Concilium simpliciter supra Papam esse, nec amplius de hoc opus est exempla producere, quum habeamus varia Decreta Sacri Basileensis Concilii, et etiam Constantiensis, quomodo Papa dicatur subesse Conciliis. Et licet Constantiense tantum in tribus casibus loquatur, clarum est,

"On these three points the Council of Constance hath defined the Faith: and that definition is for the future indisputable and immutable.[1]"

We have the two famous Carthusians[2] of that time, Dionysius de Ryckel, a Fleming, and Jacobus de Paradiso, a German, who writes to the same effect,—the former in the treatise, "*de Auctoritate Papæ et Concilii Generalis,*" (which we have already cited in Art. xx.) the latter in the treatise, "*de Septem Statibus Ecclesiæ,*" reprinted by Goldastus.[3] And it is to be remarked that this second Carthusian not only alleges the Decree of Constance as a fundamental and dogmatical rule, but affirms that it was generally received in all the Church. For, speaking of those belonging to the Roman Courts, he says, "They altogether strive to suffocate the authority of Councils, contrary to the decree everywhere received, which was promulgated by the General Councils of Constance and Basle.[4]" We have besides the four famous Universities of Cologne, Erfurdt, Vienna, and Cracow: all of which, in the opinions which they delivered on the authority of Councils, in the year 1440, recognized the Decree of Constance as a fundamental law of the Church. Any one who wishes to read them will find them in the History of the University of Paris, written by Buleus, vol. v.[5]

Lastly, we have three other writers of the same period, of the greatest authority, a Spaniard and two Italians.

XXXIII. The Spaniard is the celebrated John de Segovia, Archdeacon of Oviedo, and subsequently Archbishop of Cesarea, who attended the Council of Basle as Theologian of the University of Salamanca, and of the King Don Juan II. of Castile, in the year 1432. Here he composed a voluminous work, "*de Ecclesiasticâ Potestate,*" which it is to be regretted has not been put within the reach of all by being printed. The modern

quod omnes Canones facti aut amplius factibiles, ad ipsos reducuntur.—Cusa, p. 738.

[1] In his tribus jam definitio præcessit in Constantiensi Concilio amplius indisputabilis et immutabilis.—Cusa, p. 748.

[2] Carthus. tom. x. fol. 370.

[3] Goldas. tom. ii. p. 1571.

[4] Totaliter nituntur suffocare auctoritatem Conciliorum, contra decretationem ab omnibus acceptam, in Constantiensi et Basileensi Generalibus Conciliis publicè promulgatam.

[5] Buleus, tom. v. pp. 460, 462, 471, & 479.

German, Hardt, has given us an inestimable fragment from his MSS., which speaks thus:—"It appears that in General Councils many Canons were made to regulate the acts of the Supreme Pontiffs. Whence we learn, that the Church is to the Pope as the formal cause. For the power of the Pope is without form, and to be guided by the regulations of the Church. Whence it plainly appears that the words, 'No one can say to the Pope, Why doest thou so?' or the like, cannot comprehend a General Council. And although there has perhaps been hitherto a doubt about these things with some men, yet now in order that no one may doubt, a declaration upon this subject was made by the Church in the Council of Constance, in the Province of Mayence, April 6th, A.D. 1415, to this effect, &c.[1]"

XXXIV. Of the two Italians, the first is Nicholas Tudeschi, Cardinal Archbishop of Palermo, commonly called the Panormitan, who at the Council of Basle composed a large work entitled, *de Auctoritate Concilii supra Papam*, of which Hardt has copied the following fragment: "Let now disputes, glosses, and the opinions of Masters have an end, through the declaration of truth made in that great Council of Constance, where it was declared that in things relating to faith, the extirpation of schism, and the reform of the Church in its head and in its members, the Council is superior to the Pope.[2]" In the Commentaries on the chapter *Novit, de Judiciis*, dictated in the University of Coimbra, in the year 1548, the celebrated Martin of Navarre mentions this doctrine of the Panormitan, "whom," he says, "our own chiefly follow.[3]" From which we gather that

[1] Constat in Generalibus Conciliis factos fuisse plurimos Canones ad regulandas actiones Summorum Pontificum. Ex quo docemur, quod Ecclesia se habet ad Papam ut formalis causa. Potestas enim Papæ est informabilis et dirigibilis per regulas Ecclesiæ: unde manifeste patet, quod illud verbum: Nemo potest dicere Papæ, Cur ita facis? vel simile, non comprehendit Generale Concilium. Et licet de his hactenus fortasse fuerit dubium apud aliquos; jam tamen ut nemini liceat dubitare, super hac materia facta fuit per Ecclesiam declaratio in Concilio Constantiensi Moguntinensis Provinciæ, die 6 Aprilis, Anno Domini 1415, sub hoc tenore, &c.—Hardt, tom. vi. p. 7.

[2] Hodie cessent disputationes, glossæ, et opiniones magistrorum, per declarationem veritatis factam in illâ magnâ Synodo Constantiensi: ubi fuit declaratum, quod in his quæ pertinent ad fidem, et ad extirpationem schismatis, et ad reformationem Ecclesiæ Universalis in capite et in membris, Concilium est supra Papam.

[3] Quem frequentiùs nostri sequuntur.

this is the most prevailing opinion among the Canonists. In the year 1578, the work of the great Diego de Payva de Andrade, Theologian of the King Don Sebastian at the Council of Trent, was printed at Lisbon. In the first Book, p. 19, this learned and eloquent Portuguese alleges the Decrees of the fourth and fifth Sessions of Constance, as decrees of the Catholic Faith, at least so far as they define the General Council to represent the Universal Church, and to derive its power immediately from CHRIST. In page 30, he shows and maintains that the Pope's confirmation is not needed to give to the Decrees of General Council their force and infallibility: in page 36, he teaches, with Cardinal de Torquemada, that in case of any difference of opinion between the Pope and the Council, the sentence of the latter must prevail over that of the Pope; so different was the doctrine subsequently established in Portugal by the Jesuits from that of our greatest divines!

XXXV. The other Italian whom I alluded to, is Pope Pius II., who, before his elevation to the Papacy, was secretary to the Council of Basle. In the second Book of his history he writes thus, "I wish this to be especially remarked, that all who are of any account subject the Pope of Rome to the Council.[1]" And further on, "The Council of Constance may suffice us, whose authority was not less than that of the four which the illustrious Doctor Gregory says should be venerated equally with the four Gospels.[2]" Shortly before this he had observed that it was only from pride or interest that some of his cotemporaries upheld the contrary doctrine, "either they are greedy of glory or by adulation they look for reward,[3]" which is the same as John Major, a Theologian of the Sorbonne, remarked eighty years afterwards in his Commentaries on the eighteenth chapter of S. Matthew. "A Council is rarely called, nor does it confer Ecclesiastical dignities; the Pope confers them, and hence it is that men flatter him, saying that he alone can do all things,

[1] Illud in primis cupio notum, quia Romanum Papam omnes qui aliquo numero sunt Concilio subjiciunt.—Sylvius, p. 773.

[2] Sufficere nobis Constantiense Concilium posset, cujus non minor auctoritas fuit, quàm illorum quatuor quæ illustris Doctor Gregorius ut quatuor Evangelia venerari se dicit.—Sylvius, p. 774.

[3] Sive avidi gloriæ, sive quod adulando præmia expectant.—Sylvius, p. 772.

that he can make round square, and square round, both in spirituals and temporals.[1]" But the main thing is, that this same Æneas Sylvius, when he became Pope, under the title of Pius II., in the very same Bull, *In minoribus*, in which he condemns the Acts of the Council of Basle done after the transfer of the Synod to Ferrara by Eugenius IV., recognizes the Council of Constance as a Holy and Lawful General Council, protesting that he receives and approves its definitions concerning the Ecclesiastical power. "Together with these, we hold the authority and power of a General Council as it was, in our time, declared and defined at Constance, whilst the Œcumenical Synod was held there: and we venerate the Council of Constance, &c.[2]"

XXXVI. From the whole of this argument, the reader will perceive without difficulty the reason why the Holy Fathers, and the early Popes themselves, attributed to the Canons of the General Councils, and to customs universally received in the Church, many of the privileges and prerogatives annexed to their Primacy. As when Pope Julius wrote to the Orientals, "Are ye ignorant that by the Ecclesiastical Canon, it is ordered that we be first written to, &c.[3]" And the Fathers of Chalcedon in Can. 28, "The Fathers justly assigned her privileges to the See of the elder Rome, because that city was the seat of empire.[4]" And the Bishops of Africa in their Synodal letter to Pope Theodore, "To whom" (meaning the Roman Pontiff) "the decrees of the Fathers enjoin a certain peculiar reverence in honour of the blessed Peter.[5]" He will also understand the reason why the Nicene Fathers in Can. 6, wishing to prescribe

[1] Concilium raro congregatur, nec dat Dignitates Ecclesiasticas; Papa dat eas: hinc homines ei blandiuntur, dicentes quod solus potest omnia; quadrare rotunda, et rotundare quadrata, tam in spiritualibus, quam in temporalibus.—At the end of vol ii. p. 1144 of Gerson's works.

[2] Cum his et Generalis Concilii auctoritatem et potestatem complectimur, quemadmodum et ævo nostro Constantiæ, dum ibi fuit Synodus universalis, declaratum definitumque est. Veneramur enim Constantiense Concilium, &c.—Hardouin, tom. ix. p. 1450.

[3] An ignoratis, Canonem esse Ecclesiasticum, ut prius nobis scribatur, &c.

[4] Sedi senioris Romæ, eo quod urbs illa imperaret, jure Patres privilegia tribuerant.

[5] Cui etiam in honorem Beatissimi Petri Patrum Decreta peculiarem quandam sanxere reverentiam.

and mark down the limits of the larger dioceses, did not have recourse to the determinations of the Roman Pontiff, but to the *custom* generally received in the Church since the time of the Apostle. "Let the ancient custom be followed throughout Egypt, the Pentapolis, and Libya, so that the Bishop of Alexandria may have the administration of all these, &c.[1]" And the Fathers of the second Œcumenical Council in Can. 2: "Let the Bishop of Alexandria, as the Canons direct, rule only in the affairs of Egypt, the Bishops of the East in matters relating to the East, &c.[2]" Whence it follows that the division of Dioceses is not a matter of Divine right, but of human Ecclesiastical Law (as Cusa observes in Book ii. Chap. 13, *de Concord. Cath.* after S. Jerome quoted by Gratianus in Cap. *Olim*, Dist. 93). And also that this division is not to be supposed to be made by the authority of the Pope alone, but by that of the whole Church, which signified its consent either by law or by custom, as is taught, by Gerson, *de Potest. Eccl.*, Consid. 9 : by Cusa, Book ii. Chap. 32 ; by Peter de Marca, *de Concordiâ*, Book vi., Chap. 1 ; by Bossuet, Book viii. Chap. 15 (new edition) ; by Dupin, Dissert. 1, *de Formâ et Distributione Ecclesiarum*, § 7 ; and Dissert. 4, *de Primatu Romani Pontificis*, § 3; and by Richer, in his *History of General Councils*, Book i. Chap. 2, No. 14, and Chap. 3, No. 17, and who has treated this point better than any other Theologian.

He will also understand that since the Popes cannot abrogate or infringe upon the Canons of the General Councils, nor rob the Bishops of those privileges which the Church, from the earliest ages, has annexed to their order, they (the Popes) are not Lords, but executors of the Canons of the Church ; and that upon the strength of those Canons, rather than of their own authority, the Popes themselves in ancient times opposed the pretensions of the Eusebians, and of S. Meletius and S. Flavian of Antioch, and of Theophilus of Alexandria, and of S. Anatolius and Acacius of Constantinople, and of other Autocephalous Prelates. As Gelasius expressly affirms in Epist. 4, when speaking of his predeces-

[1] Antiqua consuetudo servetur per Ægyptum, Pentapolim, et Libyam : ut Alexandrinus Episcopus horum omnium administrationem habeat. Similiter et apud Antiochiam, &c.

[2] Juxta Canones Alexandrinus Episcopus quæ in Ægypto sunt regat solummodo, &c. Orientis Episcopi Orientem tantum gubernent, &c.

sor S. Felix III., he says that he is "the executor of the ancient institute, not the framer of a new constitution. Which was lawful not only for the Apostolical Primate, but also for every Pontiff.[1]"

He will understand that although the Pope is Supreme Prince in the Church, he is nevertheless not so despotic as not to be subject to the laws of the whole body, and that the form of government instituted by CHRIST, and exercised by his Apostles, is indeed monarchical, but tempered by an admixture of the aristocratic and democratic, as Cardinal d' Ailly expressly taught at the Council of Constance, in his treatise *de Auctor. Con. Gen. et Rom. Pont.* Part 2, and by Gerson, *passim*, and by all the other writers whom we have quoted and followed.

Finally, he will understand that the titles of "Head and Pastor of the whole Church, Father and Master of all Christians," which Pope Eugenius IV. claimed for the Roman Pontiff as a matter of Divine right in the Bull *Lætentur Cœli*, passed in the Council of Florence in 1439, are all to be understood in the sense in which Martin V., predecessor to Eugenius, had declared in his Bull, *Inter Cunctas*, published in 1418, by the Council of Constance.

The forty-first proposition of John Wicliff was this: "It is not necessary to salvation to believe that the Roman Church is supreme amongst the other Churches." And it was condemned by Pope Martin and the Council, who said in their censure, "It is erroneous, if under the name of the Roman Church, the Universal Church, or a General Council be intended, or as far as it denies the Primacy of the Supreme Pontiff over the other particular Churches.[2]" The inference from this is that the Supreme Pontiff is indeed Head and Master and Pastor of the Universal Church, but then the Universal Church must be taken *distributivè*, as the Philosophers say, *i. e.* considered in each of its members or particular Churches, and not as the Universal Church *collectivè*, that is, considered as Universal, and taken for the whole body, or the General Council representing it; that in

[1] Executorem fuisse veteris instituti non novæ constitutionis auctorem. Quod non solum Præsuli Apostolico facere licet sed et cuicunque Pontifice.—Gerson, tom. ii.

[2] Hardt, tom. iv. p. 1525.

this *second* sense, the Pope is neither head of the Church, nor of the General Council, but CHRIST alone, and that the Pope is subordinate to the Church taken generally for the whole body, as being a member of Her and Her Son, however worthy and superior to any one of the other members.

XXXVIII. This is what the Fathers of Basle maintained, viz.: that the Pope is "superior *in* the Church, but not superior *to* the Church.[1]" And Gerson in his sermon on S. Antony, "That supreme and full ecclesiastical power is to be allowed to the Pope, but compared with individual members and particular churches.[2]" And he adds that what the Angelic and Seraphic Doctors have written concerning the absolute power of the Popes is to be understood in this sense. The other Theologians quoted above concur in this doctrine, viz.: Cardinals Zabarella, d'Ailly, and Cusa, the Bishops of Avila, Megara, and Cesarea, the Panormitan, Æneas Sylvius, and the Universities of Paris, Cologne, Vienna, Erfurdt, and Cracow. As a specimen of all, let us hear that of Cologne, in its opinion transmitted to the Archbishop in 1440. "The Church collected in Synod, has supreme authority over the world, to which every member of the Church of whatever dignity, even the Pope himself, is bound to yield obedience[3]"; and again, "All are bound to obey CHRIST and His Spouse the Church, in which the chief Presidency belongs to the Apostolic See, which is set over ALL OTHER PARTICULAR CHURCHES AND INFERIOR SEES, not over the whole Universal Church.[4]"

XXXIX. The celebrated passage in the Gloss, upon the decretal in Chapter *A recta ergo*, Pt. ii., Causa xxiv., Quæst. i., Chapter 9, confirms all this: "I ask of what Church do you understand this which is here said, that the Church cannot err? Whether of the Pope himself who is called the Church? But

[1] Superior in Ecclesiâ, sed non Ecclesiâ Superior.

[2] Dandam esse supremam et plenam S. Pontifici potestatem Ecclesiasticam, sed in comparatione ad fideles singulos et ad particulares Ecclesias.

[3] Ecclesia synodaliter congregata habet supremam jurisdictionem in terris, cui omne membrum Ecclesiæ, cujuscumque dignitatis fuerit, etiam Papalis obedire tenetur.—Hist. of the University of Paris, tom. v. p. 460.

[4] Omnes obedire tenentur CHRISTO suæque Sponsæ Ecclesiæ, in quâ prima præsidentia est sedis Apostolicæ, SUPER OMNES ALIAS ECCLESIAS PARTICULARES ET SEDES INFERIORES, non super totam universalem prælatæ.

it is certain that the Pope may err. Answer, the congregation of the Faithful is here called the Church, and such a Church cannot exist, for the LORD Himself prays for the Church. 'I have prayed for thee that thy faith fail not,' and He shall not be denied the request of His Lips.[1]" And Pope Innocent III., confirms the gloss, when he writes thus to Philip Augustus King of France: "If we should attempt to settle anything in this matter WITHOUT THE DELIBERATION OF A GENERAL COUNCIL, besides the offence to Heaven, and the infamy on earth, we might perhaps endanger our Order and Office.[2]"

XL. To conclude this lengthened discourse, it remains for us to reply to the last objection which the Theologians of the Papal Chair bring against the Decrees of Constance, which is taken from the Bull, *Pastor Æternus*, published in the Fifth Council of Lateran, by Pope Leo X., in which he declares: "That the Roman Pontiff hath power over every Council.[3]" The stress laid upon this clause by the Theologians alluded to, is remarkable, but chiefly by Cardinal Bellarmine, in Book ii. of Councils, Chapter 13, and Andrew Duval, a Doctor of Paris, who being suborned by Cardinal Perron, wrote, amongst other things, at the beginning of the last century, the treatise, *de Supremâ Romanorum Pontificum Potestate*, in which, abandoning the doctrine of his predecessors, he declared himself a violent defender of the Ultra-Montane party. But neither of these Theologians being able to deny that the Bull was wanting in the indispensable marks of a dogmatical definition, they came at last to the confession, that nothing could be gathered from it to alarm Theologians of the contrary way of thinking; for in the fourth part of his treatise, Question vii., Duval allows that neither of the two opinions can be regarded (I do not say as *heretical*, but even) as erroneous or rash: "Not only is neither of these opinions here-

[1] Quæro de quâ Ecclesiâ intelligas, quod hic dicitur quod Ecclesia errare non potest? Si de ipso Papa qui Ecclesia dicitur? Sed certum est quod Papa errare potest. Responde: ipsa congregatio fidelium hic dicitur Ecclesia, et talis Ecclesia non potest non esse, nam ipse Dominus orat pro Ecclesiâ: *Ego pro te rogavi, ut non deficiat fides tua:* et voluntate labiorum Suorum non fraudabitur.—Dec. Grat. fol. 1363.

[2] Si super hoc ABSQUE GENERALIS DELIBERATIONE CONCILII, determinare aliquid tentaremus, præter divinam offensam et mundanam infamiam, forsan ordinis et officii nobis periculum immineret.

[3] Romanum Pontificem supra omnia Concilia potestatem habere.

tical, but neither of them is even erroneous or rash.[1]" The reason of all this is that, on the one hand, Bellarmine and Duval allow it to be uncertain, whether the Fifth Council of Lateran was Œcumenical or not, since scarcely eighty Fathers were present, including Cardinals and Bishops, and they almost entirely from Italy, the Prelates of other countries being hindered from attending by the war then raging in Italy.[2] And, moreover, the clause referred to is inserted in the Bull, not by way of *definition* but by way of *narration,* or theological reasoning. The great Canus had already remarked, Book vi. Chapter 8, that in the Pontifical Bulls "the intention and conclusion of the Decree is one thing, and the reason and cause of it, another.[3]" Now the intention of this Bull was solely to abrogate the Pragmatic Sanction of Charles VII. and upon this subject Leo added various proofs of the supreme power of the Roman Pontiffs.

XLI. But these arguments are so weak that to wish to call what the Bull says in this place a *dogmatical definition,* is to wish to hold as a dogma of the Catholic faith, a point which is in no way proved, either by the Pope himself or by the Theologian who conceived the Bull. The proof from Scripture which Leo brings forward in favour of the supreme power of the Pope, is contained in these words at the beginning: "It appears from the Book of the Kings, that it is so absolutely necessary to obey the successors of Peter, that he who will not obey shall be put to death.[4]" Now I take no notice of the fact, that a passage is here cited from the Book of the Kings, which, as is observed in the margin of some editions of this Council, is only to be found in Deuteronomy,[5] but it ought not to be passed over in silence, that this text is quoted either in a mutilated or corrupted form, not only in this Bull of Leo X., *Pastor Æternus,* but also in Cap. 13, *Per venerabilem,* of Innocent III. It is *mutilated*

[1] Non tantum neutra harum opinionum hæretica est, sed etiam neutra est erronea et temeraria.—Bibl. Pontif. tom. iii. p. 564.

[2] On account of the dissensions between the King of France and the Emperor, the Duke of Milan and other Princes.

[3] Aliud est intentio conclusioque Decreti, aliud ratio et causa.—Canus, p. 202.

[4] Petri successoribus, ex Libri Regum testimonio ita obedire necesse est, ut qui non obedierit, morte moriatur.

[5] Deut. xvii. 12.

in the Bull *Pastor Æternus*, because it is quoted as if we read in Scripture: "He who will not obey the command of the Priest, shall be put to death.[1]" And it is *corrupted* in Cap. *Per venerabilem*, for it is made to say: "He who will not obey the command of the Priest, shall be put to death by the decree of the Judge.[2]" Whereas the genuine text, according to the Vulgate, has a very different sense, viz.: "He who will not obey the command of the Priest, *and the decree of the Judge*, shall be put to death." So that in order to deserve death, the guilty person must have disobeyed the *two*, and not the Priest only. Add further, that according to the current theology, an allegorical sense (such as that given by Leo and Innocent to the text before us,) is no good proof of dogma. And Peter de Marca has before observed, Book ii. Chapter 5, that the policy of the Synagogue affords no good argument for that of the Church. "They deserve no thanks from the Roman Pontiff, or from Christian Kings, who measure the authority of these dignities in the Christian Church, by Jewish institutions.[3]"

XLII. The proofs which Leo refers to, from tradition, are the following:—1st. The Letter of the Synod of Alexandria to Pope Felix in the time of S. Athanasius, the whole of which, (with all the rest of the collection of Isidore Mercator,) is now looked upon as spurious and supposititious by all writers, (as indeed Baronius had done long ago, upon the year 357,) and more, admitting the letter to be genuine, it does not prove what was intended. His 2nd proof is, that S. Leo the Great transferred the second Council of Ephesus to Chalcedon, by his own authority. But this is plainly contrary to the truth of history, which clearly shows that the Council of Chalcedon was not celebrated for a year after the conclusion and dissolution of that of Ephesus. On the other hand, it appears certain, that the former Council was convoked by the Emperor Marcian, although with the consent and approbation of the Pope S. Leo. See Natalis Alexander, Diss. xi., on the fifth century. The third proof is that

[1] Qui non obedierit Sacerdotis imperio, morte moriatur.

[2] Qui non obedierit Sacerdotis imperio, decreto judicis moriatur.

[3] Non bene merentur de Romano Pontifice nec de Regibus Christianis, qui auctoritatem harum dignitatum in Ecclesiâ Christianâ, ex institutis Judaicis metiuntur.—Marca, Pt. i. p. 70.

Martin V., without waiting for the consent of the Fathers transferred the General Council of Sienna to Basle. But I find in the Bull of that Pope which begins, *Dum onus,* that the translation was made with the common consent of the Fathers and the Pope: "In Concilio Senensi per nostros et Apostolicæ sedis nuncios tum in dicto Concilio præsidentes, eodem approbante Concilio civitas Basileensis deputata extitit." And so the translation ought to be made, according to the Decree of the Council of Constance, beginning, *Frequens,* which the same Pope alleges. The remaining passages produced in the Bull of Leo X., are some common places, proving, generally, the reverence which even General Councils have paid, and ought to pay to the Roman Pontiff. See Launoy's Epistle to Louis Maresius, which is the eleventh in Book i.

XLIII. Another proof that this Bull of Leo X. is not dogmatical, and that the decrees of Constance remained in force, after its publication, may be seen in the manner in which many theologians of importance, even out of France, spoke on this subject of the authority of Councils. Many years after the Fifth Lateran Council, John Driedus, Doctor of Louvain, in Flanders, in the fourth Book of his work, *de Ecclesiasticis Dogmatibus,* (printed first at Louvain, in the year 1533,) speaking of the subjects we have been treating of, says: "Whether is the successor of Peter set over all the Churches of other Bishops? Whether is the authority of the Universal Church greater than the authority or power of the Pope, or the contrary?[1]" He then immediately proceeds thus: "The doctrine of CHRIST, and the determination of the Council of Constance, seem to solve these questions: the doctrine of CHRIST, Who teaches in the Gospel, 'if thy brother sin against thee, tell it to the Church,' &c. Since then the Pope is a brother and a member in the Body of CHRIST, it appears to follow that he himself, should he deviate from the Faith or live scandalously, is subject to the judgment of the Church, to which, designated in the whole College of Apostles, CHRIST said, in the same place, 'Whatsoever ye shall bind on earth,' &c. Also the definition of

[1] Utrum successor Apostoli Petri sit prælatus omnibus aliorum Episcoporum Ecclesiis? Utrum universalis Ecclesiæ auctoritas sit major auctoritate seu potestate Papæ, an è contrario?—Dried. p. 566. Ed. Louvan. 1533.

the Council of Constance, in Session 5, hath declared and defined,[1]" &c.

Antonio de Cordova, a Spanish Theologian of the Order of S. Francis, and a most learned one, who was present at the Council of Trent, says thus, in Book iv. of the "Theological Questions," Question iv.: "Whether a Council is superior to the Pope, or the converse? The first opinion is, that a Council is superior to the Pope, *indistinctè*, which is held by an innumerable number of Doctors, of both the Civil and Canon Law, and by the University of Paris, and some other Universities.[2]" This work was first printed at Toledo in 1578, as the author of the Franciscan Library states.

Dominic Soto, a Spaniard of the Order of Preachers, and one of the first Theologians at Trent, in his commentary on the fourth of the Sentences, Dist. xx. Quest. i. Art. iv., says, "A Council derives its authority from the Pope no otherwise than because the Bishops are created by him, and on the other hand if in any way the Council is superior to the Pope, it is not because he receives his authority from the Council, but because every member, even the head itself, is a part of the whole, and is accordingly bound to abide by the decree and opinion of the whole."

Francisco de Victoria, another Spaniard of the same Order, as a proof of whose great learning it is enough to mention that he was a Professor of Salamanca, and Master of the celebrated Melchior Canus, Bishop of the Canaries: this Victoria, then, in the collection entitled, *de potestate Papæ et Concilii*, printed with others at Salamanca in 1565, writes thus: "As to the comparative power of the Pope, there are two opinions: first, that

[1] Videntur has quæstiones solvere doctrina CHRISTI et determinatio Constantiensis Concilii. Doctrina quidem CHRISTI in Evangelio docentis: *Si peccaverit in te frater tuus, dic Ecclesiæ*, &c. Cum ergo Papa sit pater et membrum in corpore CHRISTI, consequens videtur, quod ipse aut à fide devians aut scandalosè vivens, sit subjectus judicio Ecclesiæ, cui in toto Apostolorum Collegio designatæ CHRISTUS ibidem inquit: *Quæcumque alligaveritis super terram*, &c. Item et definitio Concilii Constantiensis Sessione quinta, declaravit et definivit, quod illa Synodus, &c.

[2] Utrum Concilium sit supra Papam, vel è converso? Opinio prima est, quod Concilium est supra Papam indistinctè, quam sequitur innumerabilis turba Doctorum utriusque juris, et Universitas Parisiensis, et quædam aliæ Universitatis amplexæ sunt, &c.

of S. Thomas, and a multitude of his followers and other doctors of Theology and Canon Law, viz.: that the Pope is superior to the Council; the other is the common opinion of the Parisians and of many other Doctors in Theology and Canon Law, such as the Panormitan and others, viz.: that the Council is superior to the Pope.[1]"

XLIV. It is much to be desired that there existed in the Theologians of the Papal Chair, the same impartiality with which two hundred years ago, and long after the Councils of Florence and Lateran, the chief Spanish Theologians spoke of the doctrines of Paris, before they were prejudiced by the writings of Bellarmine, Aguirre, Roccaberti, and Orsi. And in order to show that the same views were then prevalent in Portugal, we have already declared what the celebrated Doctor Navarro felt and wrote upon this subject at Coimbra in 1548, in his commentary on the Chapter, *Novit, de Judiciis.* We will now in the last place record the opinion of the great Diego de Payva de Andrade, Theologian of the King at Trent, at a time when the Schools and Universities of the kingdom were still free from that yoke and slavery afterwards imposed upon them by Jesuitical influence.

In the first Book of that incomparable work, *Defensio Tridentinæ Fidei,* revised by order of the Cardinal Inquisitor General, by Father Fr. Bartholomew Ferreira, of the Order of S. Dominic, and printed at the Convent of our Lady of Grace, at Lisbon, in 1578, with the licence of the Archbishop D. Christovão, and with the King's privilege; in this work, I say, of which the soundness of the theology is equalled by the elegance and purity of the style; the author establishes the following doctrine, that it is not contrary to the obedience due to the Supreme Pontiff, to oppose his commands, when they are considered to be unjust and pernicious, and that they ought to be considered to be unjust and pernicious when they are contrary to what CHRIST or His Apostles and the Holy Fathers instituted for the

[1] De comparatione potestatis Papæ est duplex sententia: altera S. Thomæ et sequacium multorum et aliorum Doctorum tam in Theologiâ quàm in Jure Canonico, quod Papa est supra Concilium: altera est communis sententia Parisiensium, et multorum aliorum Doctorum in Theologiâ et Canonibus, ut Panormitani et aliorum; quod Concilium est supra Papam.

good government of the Church. "I do not deny that if the Roman Pontiff should at any time be so mad as to order what is unjust or pernicious, his will ought to be boldly opposed, and his wicked orders set at nought with a strong and unconquered mind, which yet is not to cast off obedience, but to prefer the will of GOD to that of man. For wherever (saith Urban) our LORD or His Apostles, or the Holy Fathers following them, have clearly defined anything dogmatically, there the Roman Pontiff ought not to enact a new law, but rather, even with his life and blood, to confirm what has been already ordered; for if he acts otherwise, he would be proved not to give a judgment, but rather to err.[1]" To show that Payva is not speaking *only* of decrees made in opposition to the *Faith*, but also, and very principally, of those which militate with *discipline*, he adds, that it is the constant doctrine of all Theologians, that if the Sovereign Pontiff, abusing the power committed to him by GOD, should disturb the good order which ought to exist in the Church, infringing instead of heeding laws generally established and received, he would grievously sin and be guilty in the sight of GOD of a heavy crime. "Unde existit constans illa Theologorum sententia, Romanis Pontificibus tantam illam potestatem à CHRISTO tributam esse, ut Ecclesiæ rationibus consulant, non ut omnia licenter disturbent, dissipent, confundant: atque ideo nefarium etiam ab illis scelus admitti, si Ecclesiasticarum legum severitatem dispensationum temeritate relaxent et levitate magis quam necessitate ad dispensandum inducantur.[2]" Then after having quoted from Popes Gelasius I. and Leo IV., in confirmation of this doctrine, passages which I have already brought forward above, he concludes his discourse thus: "Which perhaps moved the Council of Constance to declare that any person whatsoever, even though endued with the supreme authority in the Church,

[1] Non inficior quod si aliquando Romanus Pontifex ita desipiat, ut quæ injusta et perniciosa sunt, imperet; audacter sit illius voluntati repugnandum, et scelerata jussa forti et invicto animo contemnenda: quod tamen non est obedientiam abjicere, sed humanæ voluntati Divinam anteferre. Ubi enim (inquit Urbanus) aperte DOMINUS vel Ejus Apostoli, et eos sequentes Sancti Patres, sententialiter aliquid definierunt, ibi non novam legem Romanus Pontifex dare, sed potius quod prædicatum est, usque ad animam et sanguinem confirmare debet: secus enim faciens non sententiam dare, sed magis errare confirmaretur.—Payva, fol. 48.

[2] Payva, fol. 48. vers.

was subject to the law of the Council, because the most fearful punishments are appointed by God for those who break the most sacred laws or remit anything of their rigour for no just cause.[1]" He who wrote thus did not despise the Council of Constance or hold it to be disallowed. It is also a judicious remark of Launoy, (Book ii., Ep. 3, No. 82, that if the Popes sin grievously, (as all Theologians grant,) by abrogating or altering without cause, the laws of General Councils, it is a sign that they live in subjection to them; for no one sins in transgressing a law, who is not subject to it.

[1] Quod fortasse Concilium Constantiense permovit, ut quemvis suprema etiam in Ecclesiâ auctoritate fulgentem, Concilii sanctionibus subjectum esse dixerit: quippe quia horrenda sint in eos supplicia à Deo constituta, qui leges sanctissimas frangunt, aut de earum severitate quidquam nullis legitimis de causis remittunt. —Payva, p. 49.

NOTE

On the title of God given to the Pope by the author of the Extravagant, *Cum inter nonnullos*. (From Pereira's Appendix).

(See Page 130.)

1. It is undeniable and certain that the gloss upon the Extravagant referred to does give the title of God to the Pope, as may be seen by any persons who will refer to the editions quoted in the "*Tentativa.*"

It is quite as certain that the Popes have never *reproved* or *rejected* this title, for the passage in the gloss referred to, appears in the edition of the Canon Law, published at Rome in 1580, by Gregory XIII., and the "Index Expurgatorius" of Pius V., which orders the erasure of other passages, yet leaves this one.

2. I will now examine into the pernicious consequences which flow from this flattery. In a letter written by Pope Nicolas I. to the Emperor Michael, he testifies that the Emperor Constantine gave the Roman Pontiff the absolute title of God, and from that he infers that Secular Princes have no power whatever over the Popes. "Satis evidenter ostenditur, à sæculari potestate nec ligari prorsus, nec solvi posse Pontificem quem constat à pio Principe Constantino Deum appellatum, nec posse Deum ab hominibus judicari manifestum est."

Yet at the end of the sixth century, when as yet the Roman Pontiffs had no temporal estate, Pope Pelagius I., writing to a King of France, declared that the Bishops of Rome, like all other Bishops, were, according to Holy Scripture, the subjects or vassals of secular Princes. "Quibus nos subditos esse Sacra Scriptura demonstrat."

Upon the authority of this real or pretended saying, however, the Pope declared

that it was the duty of the Faithful to call the Pope GOD, and so it is commanded in the *Decretum* of Gratianus, Cap. *Satis*. Dist. 96., and the Roman Theologians have accordingly made no scruple of deeming it a proper and inseparable attribute of the supreme Pontiff. The following are examples.

(1.) Cura, ut salutem quam dedisti nobis et vitam et spiritum non amittamus. Tu enim pastor, tu medicus, tu gubernator, tu cultor, tu denique ALTER DEUS in terris.

Christopher Marcelius, Archbishop of Corfu, speaking to Julius II. in an oration, held before the Fifth Council of Lateran, A.D. 1512, in the fourth Session.

(2.) DIVINÆ MAJESTATIS tuæ conspectus, rutilante cujus fulgore imbecilles oculi caligant.

Antonio Pucci, in an oration before the same Council in the tenth Session.

(3.) Antigraphum ad Clerici Gallicani de Ecclesiasticâ Potestate Declarationem. Optimo, Maximo, Summoque Pontifici, CHRISTI Vicario Innocentio XI., Urbis et Orbis Domino, Cœlorum, Terrarum, Inferorumque Janitori unico, Fideique Oraculo infallibili, humiliter dicat consecrat præsentat Nicholaus Cevoli, &c.

Dedication of a work written against the Declaration of the Clergy of France, by an author of noble blood.

(4.) Potestatem Pontificis esse infinitam, eo quod "magnus Dominus, et magna virtus ejus et magnitudinis ejus non est finis."

Fr. Augustine de Ancona, who flourished in the beginning of the fourteenth century, in his "*Summa*."

(5.) Sicut nullus potest appellare ad seipsum, ita nullus potest appellare à Papa ad DEUM quia una sententia et una Curia est DEI et Papæ.

The same.

THE SIXTH PRINCIPLE.

When the Bishops consented to the Reservations made to the Pope, (if indeed they ever did consent, at least to all,) it was upon condition that when recourse to Rome was in any way hindered, the jurisdiction and power which they had so surrendered should for the time return to them.

Authorities from S. Cyprian, S. Augustine, S. John Chrysostom, Pope S. Celestin, and John Gerson; and Examples of S. Athanasius of Alexandria, S. Eusebius of Samosata, and the Clergy of the Gallican Church.

PROOFS.

The object for which the Bishops gave up to the Apostolical See the powers and privileges of which they were possessed, could be no other than the good of the Universal Church and of each of their Dioceses, which found in the Supreme Pontiff a ready and wise assistant in all their necessities. When therefore recourse to Rome cannot be had, this object ceases, and with it the reservation to which the Bishops consented. For this reason, that the office of Bishop is, *jure Divino*, the office of a Pastor. According to S. Peter, "feed the flock which is amongst you," and in another place, "not as ruling over God's Heritage, but as being ensamples to the flock." And the care of the sheep is inseparably connected with the office of Pastor to aid and assist

them in all things necessary to their spiritual life and preservation; for CHRIST instituted Pastors, who are the Bishops, through His love for the sheep and for their good. As S. Augustine in Book ii. against Cresconius, Chapter 11. "For we who are Bishops are not so for our own sake, but for the sake of others."[1] Now no one can deny that one of the things which the Sheep of CHRIST, who are the Faithful, require, is some one who in cases of necessity may exercise charity and compassion towards them in mitigating the rigour of the Canons and Laws of the Church which cannot and ought not always to continue in their full rigour, as the Council of Trent well teaches, Session 25, Chapter 18, and Pope Paschal II. in his Epistle, (forty-second) to S. Anselm[2] of Canterbury, and S. Ivo of Chartres in the Prologue of his Decretum. The power of dispensing being then, on the one hand, an inseparable accessory of the *Episcopate;* and on the other, this power being *necessary* to the Church, the spiritual injury to that Church would be most serious, and the power which CHRIST left to her for edification would turn to destruction; if when recourse to the Supreme Pontiff is hindered, the Bishops could not exercise towards their people that jurisdiction with which the Canons entrust them. Hence Gerson inferred that however ancient may be the right of the Supreme Pontiffs in some of these reservations, not one of them can have any authority or force, contrary to the public benefits of the Churches and Dioceses, and that consequently the Bishops have a right to oppose them whenever harm would ensue to their people from an opposite course. "Let the Prelates of the Church arise and offer to GOD the sacrifice of righteousness, and let them think it good utterly to put away these rapines, thefts, and robberies of the Romish Court," [he so names the Reservations,] "for they cannot stand or be prescribed to the injury of the whole Church, since they are contrary to the proper nature of the mystical body and contrary to all justice, &c.[3]"

[1] Neque enim Episcopi propter nos sumus, ... sed propter alios sumus.—S. August. tom. ix. p. 415.

[2] S. Anselmi Op. p. 382.

[3] Exurgant Prælati Ecclesiæ offerentes DEO sacrificium justitiæ, et has rapinas, furta et latrocinia Romanæ Curiæ dignentur penitus amovere; quia non possunt

II. This opinion is confirmed by the authority of the most celebrated Theologians and Canonists, (as I shall show in the second part of this Essay,) who all agree that, under the above circumstances, their ancient jurisdiction again devolves upon the Bishops, which ought to be regarded not as merely delegated, but proper to them.

It is further confirmed by the common persuasion and practice of the Bishops, that whenever recourse to the Apostolic See was hindered, whether by war or on account of some long schism, or by the prohibition of the Prince, they, the Bishops, could dispense and absolve in all cases usually reserved to the Pope, when by delay, serious injury might be done to the people. Thus the Bishops of Spain understood and acted during the reign of King Henry III. in 1399, in the great Schism which for forty years oppressed the Church before the Council of Constance, and also the Bishops of France in 1408, during the reign of Charles VI. In like manner did the French Bishops understand and act in the time of the rupture between Louis XII. and Pope Julius II., and the Spanish Bishops during the rupture between Philip II. and Paul IV. All these and other documents will be found in Part II. of this work.

III. In order thoroughly to understand this Sixth Principle, and fully to illustrate it, it is necessary to bear in mind a theological truth common to and agreed upon among all the holy Fathers, but with which, perhaps, all my readers may not be acquainted. It is this, that as the flock of CHRIST is *one*, divided into many, (wherefore the Church calls Herself One, though divided into many,) so the care of this flock is common to all the Pastors, who are the Bishops, in order that if some fail in their duty, the others may assist to feed the sheep of CHRIST. Thus S. Cyprian in Epistle 67: "Although we be many Pastors, yet we feed one flock, and we ought to gather and cherish all the Sheep which CHRIST sought by His Own Blood and Passion;[1]" and again, "The One Church throughout the world was divided by CHRIST

in detrimentum universalis Ecclesiæ stare aut præscribi, cùm sint contra naturam propriam corporis mystici, et contra omnem ordinem justitiæ, &c.—Gerson, tom. ii. p. 184.

[1] Et si pastores multi sumus, unum tamen gregem pascimus, et oves universas quas CHRISTUS Sanguine Suo et Passione quæsivit, colligere et fovere debemus.—S. Cypr. Ep. 67.

into many members. Also the Episcopate is One, diffused by the harmonious multitude of many Bishops.[1]" And S. Augustine in Book i. Chap. i., against the two Epistles of the Pelagians: "The Pastoral oversight is common to all of us who discharge the Episcopal office. I do what I can according to my own portion of the charge as far as the LORD vouchsafes to grant me.[2]" And Pope Celestin I. in his Epistle to the Fathers of Ephesus: "We are bound to this care by hereditary right, wheresoever throughout the world we preach the Name of the LORD, in the place of the Apostles.[3]" And S. John Chrysostom in his Panegyric of S. Eustathius of Antioch: "He had been, through the grace of the SPIRIT, well taught that a Bishop of the Church is bound to take care not only of those things which have been committed to him by the SPIRIT; but also of all things which throughout the world, &c." Hence it follows, that failing the Supreme Pontiff, the Bishops may and ought to, provide spiritually for all the wants of their people, since thus only can it be shown to be true that the flock of CHRIST is never without Pastors; thus only can the Bishops fulfil the obligation imposed upon them by S. Paul, when he said, "Take heed therefore to yourselves and to all the flock over which the HOLY GHOST hath made you Bishops to feed [or *rule*, Vulg.] the Church of GOD.[4]" Then only can the Bishops escape from the complaint which GOD makes by Ezekiel, "The diseased have ye not strengthened, neither have ye healed that which was sick, neither have ye bound up that which was broken;[5]" thus only will they be found imitators of S. Athanasius, who, (as S. Gregory Nazianzen mentions him for it with praise in his twenty-first Oration,) being Bishop of Alexandria, seemed (such was his zeal and care) to be Bishop of the whole Church, as S. Basil of Cæsarea also wrote concerning him, Epistle 69 (otherwise 52): "The care of all the Churches is

[1] A CHRISTO una Ecclesia per totum mundum in multa membra divisa. Item Episcopatus unus, Episcoporum multorum concordi numerositate diffusus.

[2] Communis est nobis omnibus, qui fungimur Episcopatûs officio, specula pastoralis. Facio quod possum pro mei particula muneris, quantum mihi DOMINUS donare dignatur.—S. Aug. tom. x. folio 412.

[3] Hereditario in hanc sollicitudinem jure constringimur, quicumque per diversa terrarum loca Apostolorum vice nomen DOMINI prædicamur.

[4] Acts xx. 28. [5] Ezek. xxxiv. 4.

upon you as much as of that one which hath been especially entrusted to thee by the LORD." Thus only will they follow the example of Eusebius, Bishop of Samosata, who, as Theodoret[1] relates, Book iv. Chapter xii., being banished from his diocese during the persecution of Valens, and finding many Churches in Phœnicia, Syria, and Palestine, without Bishops and Curates, provided them with Pastors, although himself only a Suffragan of Euphratesia. And lastly, thus only will they show themselves to be followers of that sound theology which the Bishops of France propounded in their Encyclical Letter of February 10th, 1631,[2] and upon which they acted, saying as follows, "The Episcopal jurisdiction hath its limits, but Charity hath none. We all both can and ought to use often those words of the Apostle, 'that which presseth on me daily, the care of all the Churches.' Therefore, according to the ancient and Apostolic institutions, if any schism or heresy should arise in our dioceses, we restrain it by authority; if elsewhere, we heal it by charity, which then only is worthy of CHRIST, the Bishop of our souls, when it embraces all, as He died for all." We do not intend by all this to say that one Bishop may intermeddle in the diocese of another, but this, that when the Supreme Pastor is hindered from providing for the wants of the flock of CHRIST, the Bishops *may* and *ought* to supply that deficiency each one in his own Diocese.

[1] Theod. Ecc. Hist. tom. iii. p. 673.

[2] Limites habet Jurisdictio Episcoporum, non habet Caritas. Omnes illud Apostoli usurpare et possumus et debemus, *Instantia mea quotidiana, sollicitudo omnium Ecclesiarum*, &c. Itaque veteri atque Apostolico instituto, si qua in nostris Parœciis schismata oriuntur aut hæreses, auctoritate compescimus: si alibi, medemur amore; qui* tum demum CHRISTO dignus est animarum nostrarum Episcopo, cùm omnes complectitur, sicut pro omnibus Ille mortuus est.—Epistle of the Bishops at the beginning of the works of Petrus Aurelius.

* [We cannot, at the moment this sheet is passing through the press, consult the original: but the sense evidently requires—*quæ—digna*.—TRANSL.]

THE SEVENTH PRINCIPLE.

When access and recourse to Rome is prevented by Kings and Sovereign Princes, it is not the part of the Bishops to inquire into the justice of the cause, but to obey and to provide, in the interim, what is needful for the spiritual welfare of their people.

The Doctrine of the Apostles concerning the obedience due to Sovereign Princes.

Authorities of S. Athanasius, S. Augustine, and other Fathers on the subject.

PROOFS.

I. It is a principle of Evangelical morality, that whenever the Prince exercises his right, and his command does not clash with either the Divine or natural Law, (for then, as the Apostle says, "it is right to obey God rather than men,") we ought, all, at once, to obey the command. Let us hear the Apostle, the Supreme Pontiff, in his first Epistle, Chapter ii.: "Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the King as supreme, or unto Governors, as unto them that are sent by Him." And again, "Servants, be subject to your masters with all fear; not only to the good and gentle, but also to the froward. For this is thankworthy if a man for conscience toward God endure grief, suffering wrongfully." It is the will of God that you obey your Kings, magistrates, and lords, not only those who are good and just, but also

the harsh and unjust. For our merit in the sight of God lies in suffering unjustly. Thus did S. Peter teach the Faithful, commanding them to obey their lawful Princes without contradiction, even though they were as unjust and perverted as a Nero, in whose time he wrote. As a disciple of the same school, S. Paul affords the same doctrine in his Epistle to the Romans, Chap. xiii., where he says: "Whosoever therefore resisteth the power resisteth the ordinance of God: and they that resist shall receive to themselves damnation. . . . . Wherefore ye must needs be subject not only for wrath but also for conscience sake." He that resists the order of the Prince or magistrate, resists the ordinance of God, therefore of necessity ye must obey, not only to avoid the temporal punishments awarded to those who disobey their ruler, but also because in conscience you are obliged by God to obey your lawful superiors.

II. Instructed in this doctrine of Christ and His Apostles, the ancient Fathers teach, at every step, that even if the Prince exercise his power and right unjustly, we are all bound to obey his commands unless he should enjoin us to violate the law of God or nature. Thus Tertullian: "We ought to be subject to the powers with all submission, within the limits of discipline.[1]" And S. Augustine: "Whether the power favouring the truth shall correct any one, he who hath been reformed shall receive praise from it; or whether being hostile to the truth, it shall rage against any one, he who hath been crowned shall receive praise from it.[2]" And again: "Princes are so to be endured by their people and by the servants of God, as under the exercise of tolerance things temporal may be borne, and things eternal hoped for.[3]" What command can be more unjust than to banish a Christian for his faith? But S. Cyprian, Epistle vii., to Rogatianus, affirms that the Christian who having been banished by order of the Emperor or of the Proconsul Gentius, should return to his

1 In omni obsequio subditos nos esse debere potestatibus, intra limites disciplinæ.

2 Sive potestas veritati favens aliquem corrigat, laudem habet ex illa qui fuerit emendatus; sive inimica veritati in aliquem sæviat, laudem habet ex illa qui fuerit coronatus.

3 Ita à plebibus Principes et à servis Domini ferendi sunt, ut sub exercitatione tolerantiæ sustineantur temporalia, et sperentur æterna.

country contrary to that order, is at once punished, not as a Christian, but as guilty of disobedience. "Another returns to the country whence he had been banished, that being arrested he may perish, not now as a Christian, but as a criminal.[1]" S. Eusebius of Samosata is said, by Theodoret,[2] when his people desired to prevent his banishment, (by order of Valens,) to have repeated the Apostolic law, which commands exact obedience to Princes and Governors, and immediately to have embarked for his place of banishment. Two other Catholic Bishops, Eleusius of Cyzicus, and Silvanus of Tarsus, when the impious Constantius threatened to depose them from their Sees, through his hatred of the true Faith which they defended, both replied that the Emperor had power to punish them, and they, the Bishops, power to embrace or not the truth. S. Athanasius[3] in his Apology to Constantius, No. 26, plainly declares that he would not enter Alexandria, whence he had been banished, as long as the Emperor should forbid him: "I have offered no opposition to the command of your piety, nor will I attempt to enter Alexandria until it shall please your humanity." And a little before he had confessed that he would obey even the Quæstor of the city, if only he were the Emperor's Minister.

These holy Bishops knew well that the Emperor's precepts were unjust, iniquitous, and tyrannical; but seeing, on the one hand, that the thing commanded them did not clash with their duty to GOD, and on the other, that the Emperor exercised therein his right; they obeyed without murmuring, and declared that in obeying these unjust commands they fulfilled the law which CHRIST and His Apostles prescribed to all Christians.

III. Now if when the Prince abuses his power as did Constantius or Julian, such men as Athanasius, Meletius, Cyril, and Eusebius, obeyed, and further declared and taught that he ought to be obeyed; who could excuse the Bishops of Portugal from obeying, fully, so just a command as that which our most pious and prudent Sovereign imposed when he forbade all his subjects to hold intercourse with or have recourse to Rome?

[1] Alius in eam patriam, unde extorris factus est, regreditur, ut deprehensus non jam quasi Christianus, sed quasi nocens pereat.

[2] Theod. book iv. chap. xiii., tom. iii., p. 676.

[3] S. Athan. tom. i., p. 247.

This Mandate has in its favour not only the impress of remarkable piety, which is seen to shine as an hereditary virtue in all the actions of our Lord and King, but also the practice of all Catholic Sovereigns, who are accustomed by means of these prohibitions to avenge, without any contempt of Religion, the offences done to their Sovereignty. But, on the other hand, it does not belong to subjects to inquire into or weigh the justice or injustice of these royal proceedings; nor is the King bound to impart his reasons to them; it being an established doctrine that when the matter of the Mandate does not exceed the limits of the regal power, but rather is within those limits, the presumption of justice ought always to be in favour of the Sovereign. Now it is very certain that the matter of the Royal decree, which forbids to the Portuguese all communication with Rome, is a proper object of the authority of Sovereigns, to whom it belongs, exclusively, to regulate whether his subjects shall leave his kingdom or not, or shall or shall not hold intercourse with such and such foreigners. Therefore if the justice of his Majesty's proceedings were not so clear as it has been made by the repeated manifestos which our Court has published, yet always, by the law of charity towards our neighbour, and by those of duty to the King, we ought all to presume that the decree was fully justifiable.

IV. But if any one (which I do not imagine will be the case) should suppose that the decree is unjust; at least then it is not more unjust than that of Constantius or of Valens, which commanded Eusebius and Athanasius to leave Samosata and Alexandria, (where God had willed that they should dwell as Bishops and Pastors of His flock,) and yet when once the Emperor commands them to depart, they both do so and both protest that they ought to do so. Again, it is not more unjust than the decree of the same Constantius, by which, to the great bodily hurt of some six hundred Bishops, and the grievous Spiritual harm of as many dioceses, he detained for months, and in the middle of the winter, a whole General Synod of the West. Nevertheless this whole Synod, even when it was legitimate, (for Catholic it was always,[1]) implored the Emperor to grant them leave to re-

[1] [*i. e.*, in intention.]—TRANSL.

turn to their Provinces, because, without it, they confessed that they could not do so. "We again implore your clemency, most august Emperor, that you would allow us to return to our Churches before the severity of the winter, if it shall seem good to your piety.[2]" It is not more unjust than the decree of Mauritius, who forbad soldiers to become monks, and yet S. Gregory the Great, when commanded by the Emperor to promulgate it, did so, confessing that it was his duty, as a subject, although he knew it to be a law ill agreeing with the law of GOD. "I, indeed, being subject to the command, caused that decree to be promulgated through the different parts of the earth; and since the law ill agrees with that of The Omnipotent GOD, I declared it to the Most Serene Princes.[3]" Finally, it is not more unjust than that of which Pope Innocent III. speaks in a letter to an Anglican Bishop, (from which were formed the Chapters, *Pastoralis*, Book i. Tit. 29. *de Officio et Potestate Judicis delegati*,[4]) where he says, "Since then it often happens that the Ordinary is required to execute the sentence, you have asked whether he ought to order its execution when he knows it to be unjust? whether he ought not rather to resist it? We reply that, since the Ordinary is bound to obey the Delegate; even if he shall know the sentence to be illegal he is nevertheless bound to execute it, unless he can induce him to release him from the burden.[4]"

V. Lastly, whatever be the nature of the Royal Decree, it is certain that it prohibits, *de facto*, all intercourse with Rome; it is certain that in virtue of it, all Portuguese are, *de facto*, prohibited to have recourse to the Apostolic See, and prohibited

[1] Tuam clementiam iterum obtestamur, Imperator Augustissime, ut ante hyemis asperitatem, modo tuæ pietati visum fuerit, nobis ad nostras Ecclesias reverti facias potestatem.

[2] Ego quidem jussioni subjectus eandem legem per diversas terrarum partes transmitti feci: et quia lex Omnipotenti DEO minimè concordat, ecce Serenissimis Dominis nunciavi.—S. Greg. Epis. book iii. No. 65, to Mauritius, tom. vii. p. 222.

[3] Dec. Greg. fol. 336.

[4] Quia vero sæpe contingit, quod executio sententiæ Ordinario demandatur, quæsivisti, an si ipsam injustam esse cognoverit, debeat eam executioni mandare? an sit ei potius subsistendum? Respondemus, quod cùm Ordinarius teneatur obsequi Delegato, et si sciat sententiam illam injustam, exequi nihilominus tenetur eandem, nisi apud eum efficere possit, ut ab hoc onere ipsum absolvat.

under the severest penalties; it is certain that neither Bishops nor people can prevent the decree and restore free intercourse with Rome. Therefore we are so circumstanced that we may truly say that we cannot have recourse to Rome, that recourse to the Apostolic See is an impossibility, whilst they who desire to have recourse, are in no way chargeable with the obstacle. Therefore the Bishops, under these circumstances, ought to conduct themselves as they would, if the intercourse had been stopped by war, or pestilence, or some long continued schism where the true Pope was not recognizable, without thrusting themselves into the question, whether the war be or be not just, or whether the neutrality be prudent or not which the Prince enjoins, in cases in which it is doubtful which Pope they ought to obey. Thus the French and Spanish Bishops acted in times of war or schism, and so ought the Bishops of Portugal to act during the present rupture, remembering the excellent advice of S. Augustine, Book xxii. against Faustus, Chapter 75, (which Gratianus quotes in Chapter *Quid Culpatur*, Pt. ii. Caus. 23, Quæst. 1,) "A just man if he chance to serve under even a sacrilegious King may rightly fight at his command, if it be certain that what he commands is not contrary to GOD's law, or if it be not certain whether it be or not. So that peradventure the iniquity of the command may make the King guilty, but the order of serving will show the soldier to be innocent.[1]"

[1] Vir justus, si forte sub Rege homine etiam sacrilego militet; recte potest illo jubente bellare, si quod sibi jubetur vel non esse contra DEI præceptum certum est: vel utrum sit, certum non est: ita ut fortasse reum faciat Regem iniquitas imperandi, innocentem autem militem ostendat ordo serviendi.—S. Aug. tom. viii., fol. 405.

THE EIGHTH PRINCIPLE.

POPES AS WELL AS BISHOPS ARE FORBIDDEN TO DISPENSE WITHOUT JUST CAUSE; SINCE THE NECESSITY OR ADVANTAGE OF THEIR PEOPLE IS THE RULE BY WHICH BOTH ARE BOUND TO BE GUIDED IN GRANTING DISPENSATIONS.

PASSAGES FROM S. BERNARD, GERSON, THE COUNCILLORS OF PAUL III., AND DIOGO DE PAYVA DE ANDRADE.

PROOFS.

I. THE Roman Pontiffs prescribe this rule to themselves in Chapters 13, 19, 30, and 38, *de Electione*, in Chapter 19, *de Sententiâ et Re judicatâ*, and in Chapter 3, *de Translatione Episcopi*; and also in many other places quoted by Dupin[1] in his treatise *de la Puissance Ecclésiastique*; in the proofs of the third proposition of the Gallican Clergy; and by Gibert, vol. ii. tit. vii. *de Prælatis*, where he makes this annotation: "The Canons which teach that it is unlawful to grant dispensations without just cause, are taken from the Epistles of the Pontiffs, in which they say of themselves, that they cannot grant dispensations unless there exists a just cause. Whence it appears that the distinction which some Canonists make between the Pope and Bishops, is contrary to truth, viz., that the Pope can dispense without cause, but that the Bishops cannot.[2]"

[1] Dupin, p. 662.

[2] Canones qui docent sine justâ causâ dispensare non licere, desumuntur ex Epistolis Pontificum, in quibus de se ipsis dicunt, se non posse dispensare, nisi justa subsit causa. Unde patet veritati contrarium esse, quod Canonistæ non-

II. Peter de Marca, Archbishop of Paris, Book iii. Chapter xv. No. 1, *de Concordiâ*, attests that this is the most common doctrine amongst Theologians and Canonists: "It is the opinion of most Theologians and interpreters of the Canon Law, that neither the Supreme Pontiff nor Kings can lawfully absolve their people from their laws without just cause.[1]" And shortly after he declares that S. Bernard, Godfrey the Abbat, John of Salisbury, Gerson, together with the Doctors of the Sorbonne, Gabriel Vasques, and most of the Canonists and Lawyers, hold the same opinion, who not only consider dispensations made without just cause as *illegal*, but also as *null, in foro conscientiæ*.

III. Bossuet, in Pt. ii. Book xi. Chapter 16 to Chapter 20,[2] largely proves this by the authority of Pope S. Symmachus, in Ep. 12, to Avitus of Vienne; of the Council of Basle, in their Synodical Letter, No. 5; of S. Bernard, of Gerson, and of the nine Prelates who delivered a lengthy and learned opinion on the subject to Pope Paul III., in 1538, as we stated above.

IV. Louis Thomassin in his Work *de Benef.* Part. ii. Book iii. Chapters 28, 29, follows the same doctrine, and confirms it by many quotations from the Fathers, Councils, Roman Pontiffs, and Scholastic Doctors,—amongst whom he alleges S. Thomas in his work *Contra Impugnatores Religionum*, Chapter 4, and in the Second of the Second, Question 88, Article 12; Thomas de Chantprè [Cantipratanus], Book i. Chapter 19, No. 9, and Book ii. Chapter 3, No. 6; Henry of Ghent; Alexander of Arles; John Gerson, and Prosper Fagnanus.

V. Bernard Van Espen in the second Chapter of his Treatise *de Dispensationibus*,[3] fully examines and proves the same subject, from the Fathers, Councils, Pontiffs, and unanimous consent of all the Theologians with S. Thomas, not only in the passages quoted by Thomassin, but also in the First of the Second, Question 79, Article 4, and with the best Canonists, as the Panor-

nulli ponunt discrimen inter Papam et Episcopum, in eoque situm, quod Papa sine causâ dispensare possit, Episcopus verò non valeat.—Gibert, tom. ii. p. 105.

[1] Plerisque Theologis et juris Canonici Interpretibus placuit nec Summum Pontificem nec Reges ipsos licitè à legibus suis posse absolvere subditos sine justâ causâ.—Marca, part i. p. 184.

[2] Bossuet, tom. ii. pp. 139—143.

[3] Van Espen, tom. ii. p. 235.

mitan, Hostiensis, John Andreas, Covarruvias, and Fagnanus, who treats learnedly of this subject in his commentaries on the Chapter *ex Parte*, the Decretals, tit. *de Clerico non residente*; and in those on Chapter *Nimis* tit. *de Filiis Presbytorum.*

VI. Of so many passages, I shall here only transcribe four: the first from S. Bernard, Book iii. Chapter 4, No. 18, *de Consideratione ad Eugenium Papam.* "Where necessity compels, to dispense is excusable, where advantage calls for it it is laudable. I mean the common advantage, not that of individuals: for when none of these reasons exist, it is plainly no longer a faithful dispensation, but a cruel wasting.[1]"

The second is from a Sermon preached by Gerson before Pope Alexander V. "You will never dispense with laws justly enacted, however you may be worried with the importunity of petitioners, unless necessity compels, or the common good calls for it. Otherwise it would be rather a cruel waste than a just dispensation.[2]"

The third is from the advice of the nine Councillors of Paul III. "Nor let us consider that we have authority to dispense with the laws, except for an urgent and necessary cause, for no more pernicious custom can be introduced into any republic than this disregard of the laws which our ancestors constituted, and whose authority they called venerable and Divine.[3]"

The last is from Diogo de Payva de Andrade, who in Book i. of his defence of the Council of Trent, says thus: "It is the constant opinion of Theologians that a wicked crime is committed even by the Roman Pontiffs themselves, if they relax the

[1] Ubi necessitas urget excusabilis dispensatio est: ubi utilitas provocat, laudabilis dispensatio est. Utilitas, dico, communis non propria: nam cum nihil horum est, non plane fidelis dispensatio est, sed crudelis dissipatio est.—S. Bernard, tom iv. p. 13.

[2] Leges recte latas, quantâlibet importunitate petentium fatigeris, numquam dispensabis: nisi aut necessitas urgeat, aut communis provocet utilitas. Alioquin fuerit potius crudelis dissipatio, quàm justa dispensatio.—Gerson, ii. p. 140.

[3] Nec putemus nobis licere dispensare in legibus, nisi urgenti de causâ et necessariâ. Nulla namque perniciosior consuetudo in quâvis Republicâ induci potest, quàm hæc legum inobservantia, quas sanctas majores nostri esse voluerunt, eorumque potestatem venerandam et divinam appellaverunt.—Richer, book iv. pt. ii. p. 73.

severity of the Ecclesiastical law by rash dispensations, and are induced to grant such dispensations by levity rather than by necessity.[1]"

[1] Constans extat Theologorum sententia, nefarium etiam ab ipsis Romanis Pontificibus scelus admitti, si Ecclesiasticarum legum severitatem dispensationum temeritate relaxent, et levitate magis quàm necessitate ad dispensandum inducantur. —Payva, fol. 48.

THE NINTH PRINCIPLE.

THERE IS AT THIS TIME IN PORTUGAL NOT ONLY SUFFICIENT CAUSE, BUT AN URGENT AND PUBLIC NECESSITY FOR THE EXERCISE OF A DISPENSING POWER IN THE CASE OF IMPEDIMENTS TO MARRIAGE.

[This Principle having now no interest nor importance, has been omitted by the Translator.]

THE TENTH PRINCIPLE.

THE BISHOPS OUGHT NOT TO FEAR THAT THE SUPREME PONTIFF SHOULD BE OFFENDED AT THEIR GRANTING MATRIMONIAL DISPENSATIONS, OR DISALLOW THEM;—BECAUSE THE SPIRIT OF THE APOSTOLIC SEE AND OF THE WHOLE CHURCH, (TO WHICH THE SUPREME PONTIFF OUGHT TO CONFORM,) IS TO ASSENT TO EPISCOPAL DISPENSATIONS WHEN SUCH URGENT CAUSES DEMAND THEM AS DEMAND THEM AT THIS TIME IN PORTUGAL.

REMARKABLE PASSAGES FROM POPE S. SYMMACHUS, S. AUGUSTINE, S. COLUMBANUS, S. BERNARD, HINCMAR OF RHEIMS, AND OTHER FATHERS UPON THIS SUBJECT.

THE AXIOM OF THE ANCIENT THEOLOGISTS AND CANONISTS: "*Papa omnia potest, clave non errante.*"

PROOFS.

I. IT is well known to the Apostolic See how far the power of the Bishops extends, their institution, and the practice of the first ages being chiefly considered. That See knows that when the Prince of the Apostles called our LORD CHRIST, *Bishop of our souls*,[1] he meant us to understand that all the spiritual jurisdiction left by CHRIST in His Church is contained and included in the Episcopate. It knows that, for many ages, the Bishops retained the power of ruling and governing their Dioceses, despotically,

[1] 1 S. Pet. ii. 25.

as the supreme and absolute dispensers of all the sacraments and graces instituted by CHRIST. It knows that they granted dispensations with the same authority, even in the case of the most universal laws, whenever the advantage or necessity of their people required it. It knows that if Bishops are bound to preserve discipline in full vigour, the sovereign Pontiffs are equally, and even more, bound to do so. It knows that if the authority of the Canons be such that they may not be relaxed without urgent cause, the authority of that *Charity* is greater, with which all Pastors ought to accommodate themselves to the condition of the times, or to the necessities of their flocks.

II. It knows that, (as S. Bernard teaches us,) the Church of Rome is the *Mother* but not the *Mistress* of all others, and that the Pope is not Lord of the Bishops, but is himself one of the Bishops. "Scias Romanam Ecclesiam aliarum Ecclesiarum Matrem esse, non Dominam: te vero non Dominum Episcoporum, sed unum ex ipsis."[1] It knows that S. Bernard declared to the same Pope, Eugenius IV., in Book iii. Chap. iv., No. 15, that it ill became him who possessed the government of the whole Church to deprive the Bishops of the small administration remaining to them. "What can be so unworthy of you as, when you have all, not to be content with all, without busying yourself to make your own a few minute and small portions of the whole?[2]"

III. It knows, that although the Canons of Nicæa forbid two Bishops in the same See, nevertheless Meletius, in order to put an end to the dissensions which existed between him and his competitor Paulinus, made an agreement that they should govern the Church of Antioch together, upon the understanding that whichever of the two survived the other, should remain Bishop, *in solidum*, of the whole Diocese. It knows, that nearly the whole Eastern Church agreed to this compromise, and that even when S. Damasus, the Roman Pontiff, opposed it, such men as S. Basil of Cesarea, S. Gregory of Nyssa, and S.

1 De Consideratione, Book iv. Ch. 7, tom. iv. p. 18.

2 Quid tam indignum tibi, quàm ut totum tenens non sis contentus toto, nisi minutas quasdam et exiguas portiones Universitatis satagas facere tuas.—Tom. iv. p. 12.

Gregory Nazianzen, persevered in regarding Meletius as true and lawful Bishop, the very Bishop with whom, in the end, Damasus himself agreed, when time had proved to him the good faith and sanctity of Meletius, and the necessity of such a Bishop to the Eastern Churches.

It knows that although it is a general law that no Bishop shall be translated from one Bishopric to another, and still less that he should govern two Sees at once, the Bishops of Armenia, taking into consideration the necessities of the See of Nicopolis, translated thither Euphronius Bishop of Colonia, and ordained that he should be Bishop of both Sees. Which arrangement S. Basil, who was Primate of the Churches of Pontus, not only confirmed, but in writing declared it to be a dispensation inspired by GOD, in which all who loved peace were bound to concur.

IV. It knows, that, although it is a law instituted by the Apostles themselves, and generally received throughout the Church, that neophytes should not be made Bishops, the Fathers of the First Council of Constantinople, amongst whom were S. Amphilochius of Iconium, S. Gregory of Nyssa, S. Cyril of Jerusalem, and S. Ascolius of Thessalonica, looking to the welfare of the Churches of Thrace, elected Nectarius to the Archbishopric: although still a layman, (he was not even baptized,) and a native of Tarsus; dispensing, in this one act, with two laws, since it was as much forbidden by the Canons to ordain any one to a See who did not belong to that particular Church, as to consecrate one not in Orders. And yet Pope Nicholas in his sixth Epistle, in which he declares *that* dispensation to be unlawful by which the Thracian Bishops had promoted Photius from the estate of a layman to that of their Primate, recognizes the lawfulness of that which so long before had been given in the case of Nectarius; affirming that the necessities of the Church of Constantinople, and the want of fit persons, was a sufficient cause for the conduct of the Fathers of Constantinople. "The second Holy Synod desired to raise Nectarius, a layman, to the sacerdotal dignity on no other account than that it was harassed by the trouble of the great necessity.[1]"

[1] Nectarium Sancta Secunda Synodus, non ob aliud ad sacerdotatem eligere et laicali ordine voluit dignitatem, nisi quià magnæ necessitatis contritione anxiebatur.

And this was, no doubt, also the reason why Pope Damasus assented to the election of Nectarius, as appears from Epistle 15 of S. Boniface I., to the Bishops of Macedonia.

V. It knows, that in the year 400, Pope Anastasius I., with the Council of Capua, ordered the African Bishops, on account of the extortions and excesses of the Donatists throughout that region, to make use of the most rigorous measures against such schismatics, so far as not even to permit them to retain the honour of their Orders, after having abjured their errors. But that nevertheless the African Bishops assembled in Synod in the following year, 401, S. Aurelius of Carthage presiding, considering that more gentle measures might be the means of inducing many to reconcile themselves to the Church, resolved with one accord, that the Priests, Deacons, and others of the Donatist clergy who should renounce their schism and return to Catholic unity, should retain the honours and rank in the Church which they possessed by their Orders, during their state of schism, and that Pope Anastasius and the other Italian Prelates should be informed of their resolution, in order that, considering the urgent need of ministers throughout Africa, they might perceive that there was good ground for granting the dispensation, as the African Bishops had already done, not only in ancient times, but at the commencement of this very schism of the Donatists. What the answer of the Pope was is unknown, as Schelstratius declares in Diss. iii. on the Church of Africa, Chap. x., No. 3. But it is well known, from the 185th letter of S. Augustine, and from his second Book, *contra Cresconium*, Chap. 11,[1] that the dispensation was in force for many years; Augustine himself, who agreed to it at the Council, being one of those who used it.

VI. It knows, that when Cresconius noticed this behaviour of the Church towards his party, the same Augustine, Book ii. Chap. 11, replied to him by that admirable sentence which ought to be the Rule of all Catholic Prelates.[2] It is to the effect that Bishops are not such *for themselves*, but for *their people*, and that therefore, the necessities of the latter ought to be the rule by which the Bishops should govern themselves so as to know

[1] S. Aug. tom. ix, fol. 415. [2] Ibid.

when to be, and when not to be, Bishops towards their people. "For neither are we Bishops on our own sake, but for the sake of those to whom we minister the Word and Sacraments of the LORD. And on this account, according as the necessity of governing them without scandal shall point, so ought we either to be or not to be, because we are not for ourselves but for the sake of others.[1]"

It knows, that according to S. Augustine, in Book ii. Chap. xiii., No. 29, against Parmenianus, such is the force of necessity and such its privileges, that what, without it, would be a reprehensible usurpation, becomes, with it, no fault at all, or at least a venial one. "If it be done without the pressure of necessity, it is an usurpation of the office of another; but if necessity urges, it is either no fault at all, or a venial one.[2]" And with this agrees the Rule "Quod non est licitum in lege, necessitas licitum facit," X. de Reg. Juris, Chap. 4. "What the law declares to be illegal, necessity makes legal." And moreover that which the Bishop of Pontus wrote to Leo Augustus agrees with it, viz., that in urgent cases the Church should enforce the Canons, "*non Aristotelicè, sed Piscatoriè.*"

VII. It is also well known to the Apostolic See, that when Pope Vigilius was unwilling to condemn the three famous Chapters, or to attend the Fifth Œcumenical Council called for that purpose, the Fathers who were present at it being altogether about one hundred and sixty, considering the opposition and resistance of Vigilius to be unreasonable, and that it was wrong to abstain, on this account, from providing for the necessities of the Church, proceeded with the celebration of the Council, and anathematized the three Chapters and their defenders. And that the Pope himself subsequently, convinced by the same reasons, subscribed to the definitions of the Council, allowing his previous resistance to have been ill advised, and that the proceedings of the Fathers,

[1] Neque enim Episcopi propter nos sumus, sed propter eos quibus Verbum et Sacramentum Dominicum ministramus: ac per hoc ut eorum sine scandalo gubernandorum sese necessitas tulerit, ita vel esse vel non esse debemus, quod non propter nos, sed propter alios sumus.

[2] Nulla urgente necessitate si fiat, alieni muneris usurpatio est: si autem necessitas urgeat, aut nullum aut veniale delictum est.—S. Aug. tom. ix. fol. 44.

in 553, over whom S. Eutychius of Constantinople presided, were justifiable.

It knows, that when Pope Martin I. was informed of the various dispensations made in the East in the matter of the election and consecration of Bishops, he gave the Orientals, in Epistle 5, his testimony that when such relaxations of the Canons were not made in contempt of the Canons, but rather were extorted by the absolute necessity of the case, the Apostolic See ought not to blame the use of them, but rather to permit them. "The Canon knows how to pardon amidst the persecutions of times of affliction, where no contempt was intended, which argued prevarication, but rather the difficulty and poverty which on account of necessity and pity compel the omission of any great strictness.[1]"

VIII. It knows, that Pope S. Symmachus, writing to Avitus of Vienne, gave him the following rule to guide him in granting dispensations. "That which is done contrary to rule, if there be a sufficient reason for it, does not break the rule, which is injured only by refractoriness and contempt for antiquity. For although the Statutes of the Fathers are to be kept with diligent observation and observant diligence, yet nevertheless for a good end to be obtained, it is allowable to relax somewhat of the rigour of the law, which the law itself would have provided for could it have foreseen it, and it would often be cruel to insist upon the fulfilment of the law, when the observance of it seems to be hurtful to the Church.[2]"

It knows, that when a certain Bishop of the Province of Rheims feared to incur the displeasure of the Roman Pontiff, if he joined with the rest of the Suffragans in electing a layman to the dignity of Archbishop of that Province, (although well

1 Novit Canon afflictorum temporum persecutionibus veniam tribuere, in quibus contemptus non præcessit, prævaricationem arguens: sed angustia magis et penuria, quæ propter necessitatem et misericordiam cogit multam diligentiam prætermittere.

2 Quod fit præter regulam, modò sit justa causa, non infringit regulam, quam sola pervicacia et antiquitatis contemptus lædit. Nam quamvis à Patribus statuta diligenti observatione et observanti diligentiâ sint custodienda: nihilominus propter aliquod bonum de rigore legis aliquid relaxatur: quod et ipsa lex cavisset, si prævidisset. Et sæpe crudele esset insistere legi, cùm observantia, ejus esse præjudicabilis Ecclesiæ videtur.—Spicilegium D'Achery, tom. iii. p. 307.

qualified in every other respect,) S. Fulbertus of Chartres removed his scruples by observing that the Pope, when informed of the necessities of the Church of Rheims, and of the advantages which would accrue to it from this election, would not take it ill that the Bishops, for these reasons, had dispensed with the Canons which forbid the elevation of neophytes or laymen to the Episcopate.[1]

IX. It knows, that when S. Anselm, Archbishop of Canterbury, demanded of Pope Pascal II. authority to grant dispensations in various cases of frequent occurrence in England, that Pope, in Book iii. Epistle 45, not only granted him the fullest powers, without limit, but likewise added, on the authority of S. Cyril of Alexandria, that the use of dispensations in urgent cases was very consonant with the spirit of the Church. "The use of dispensations, as S. Cyril says in the Epistle of the Synod of Ephesus, never displeased any of the wise; "For we know that the holy Fathers, and the Apostles themselves, used dispensations according to the circumstances of the times, and the qualities of the persons.[2]"

It knows that the Popes S. Gregory I. and S. Gregory II., considering the public necessities of the provinces of England and Germany, entrusted to the prudence of S. Augustine, Primate of England in 601, and of S. Bonifacius, the Primate of Germany in 727, the granting of dispensations for marriages within certain of the prohibited degrees.

X. Finally, the Apostolic See knows, that during the great schism of Avignon, France, Spain, and other kingdoms, being advised by their Bishops and Universities, established a strict neutrality, and withdrew from the obedience of both claimants of the Papacy, as a means of remedying and extinguishing the schism. And that under these circumstances, it was settled as certain in all these kingdoms, that whilst recourse to Rome was

[1] Dominus Papa, cujus animadversionem te revereri significasti, non habebit quod tibi merito debeat succensere, si te graviter collapsæ Ecclesiæ aliquam spem resurrectionis audierit providisse.

[2] Dispensationis modus, sicut et B. Cyrillus in Epistolâ Ephesinæ Synodi loquitur, nulli umquam sapientum displicuit. Novimus enim Sanctos Patres nostros et ipsos Apostolos, pro temporum articulis et qualitatibus personarum, dispensationibus usos, &c.

stopped or hindered, the Bishops might, whenever necessity called for it, provide for all those cases which were usually by right or custom, reserved for the Popes: for that in such conjunctures, the power which they possessed, as Bishops, before the Reservations, devolved upon the Ordinary; and that afterwards the true Pope, Alexander V., in the General Council of Pisa, holden in 1409, held as good and valid, the dispensations, provisions, and absolutions which had been made or granted by the Bishops up to that time, as appears in the twenty-second Session of that Council.

Therefore, taking into consideration all these reasons, our Bishops ought not to fear that the Holy Pontiff would take it ill if they were to grant dispensations under our present circumstances, since the spirit of the Church is otherwise, to which the Supreme Pastor ought to submit, who (as Innocent IV. writes upon Ch. *Quanto*, de Jurejurando,) "*is always accustomed and ought, to use rather the key of discretion than that of power.*" Whence arose the axiom of the Panormitan, and other Canonists upon Ch. *Venerabilem, de Electione*, that the Supreme Pontiff can do every thing, but it must be, *clave non errante*, and without prejudice to the third party.

XI. But I will suppose that the most holy Father Clement XIII., or one of his successors, disallowed and declared to be null the matrimonial dispensations granted by the Portuguese Bishops during the present rupture; as in fact it is said that Clement XI. did, who in the year 1709, by a Brief directed to the Spanish Bishops, annulled the dispensations and provisions which they had made during the time in which King Philip V. prohibited all intercourse with Rome, *in temporalibus*. But no argument can be drawn from this case concerning Portugal, not only because our present case is one of mere discipline, where, according to the different circumstances of the case, and the different dispositions and intentions of the legislators, that may be advantageous for one kingdom that is not so for another, and not only because in the case of Spain, intercourse with Rome is supposed to be forbidden, *pro temporalibus*, not *pro spiritualibus*; not only, I say, for these reasons, but chiefly for the reasons which have already been weighed and established, and which I shall in the last place recapitulate, in order to a complete solution of all doubts.

I will suppose then, as we were saying, that the Supreme Pontiff Clement XIII., who now governs the Church, or some one of his successors, disallows and annuls the matrimonial dispensations granted during the rupture by our Bishops. I maintain, then, upon the irresistible Principles which I have established, that such a Brief on the part of his Holiness ought to be looked upon as null and made upon false grounds, for want of intention and full information on the part of the Supreme Pastor.

XII. My reason for this is that as often as any Rescript emanates from the Apostolic See which notoriously injures the rights of a third party, this rescript, by the unanimous consent of all Doctors, ought to be looked upon as made upon false grounds, and therefore null, so that no effect would result from it. This is the reason why S. Cyprian in his sixty-eighth Epistle[1] written to the Spaniards, holds as null and obreptitious, the Decree which the two Bishops, Basileides of Leon and Martial of Asturias, had obtained from Pope S. Stephen, to the effect that they should both be restored to their Sees, from which the Provincial Synod had deposed them according to the Canons on account of idolatry. For since it had been established by Pope S. Cornelius, and the whole body of Bishops, that they who had been guilty of idolatry should be deprived of all exercise of their Orders, Cyprian inferred that Stephen could not re-establish the guilty without offending discipline and the rights of the Bishops, and that, therefore, the Brief from Rome ought to be regarded as null and obreptitious. Acting on the same principle, the African Bishops resisted the Decrees of Zosimus, Bonifacius, and Celestinus, in the matter of Appeals; S. Hilary, Archbishop of Arles, opposed the Rescripts of Leo the Great; and S. Ignatius of Constantinople, those of John VIII.; none of them being terrified by their threats nor alarmed at the excommunications which the Popes fulminated against them. Again, the Gallican Bishops opposed Hadrian II. in the case of Hincmar of Laon, and Gregory IX., concerning the Prebends which he desired to reserve to himself.

XIII. Now from the Principles which we have established it is evident that, by the supposed Brief, the Pope would offend against the rights of the Bishops and of the people. Because

[1] S. Cyp. p. 117.

the jurisdiction which the Bishops exercised being, as we have already proved, legitimate and ordinary, (seeing that their original authority, and that not by the grace of the Pope but by the institution of the Church, and as *ex naturâ rei*, devolved upon them by reason of the hindrance of intercourse with Rome,) the Pope would do an injury to both parties, in holding as null and void, *dispensations* granted by those who had authority to grant them, and in holding as null and void *marriages* contracted in virtue of dispensations which had been granted by those who had lawful authority to grant them. Just as he would do a great injury to the Penitent and Minister if he pretended to annul the absolution which any one had received from his true Pastor. In a word, if the Lords Bishops agree, as they ought to do, that it is one thing to defend their rights with modest firmness, and another to be schismatical; that an heroic sanctity (such as that of S. Hilary of Arles and S. Ignatius of Constantinople,) may well consist with legitimate resistance to the pretensions of the Apostolic See; that CHRIST alone is the Author of the Episcopate, and that it derives its jurisdiction not from the Pope, but *immediately* from the HOLY SPIRIT; that the power annexed by CHRIST to the Episcopal Order is of itself absolute and unlimited, for the ordering of each Diocese: that the Pope could not deprive the Bishops of this power without their own consent: that, when the Bishops consented to these Reservations, it was upon condition that when recourse to the Roman See and its influence were hindered, by any cause, for which the Bishops themselves were not accountable, the original power should return to them and revive in them, as being ordinary and *proper* to their Order: lastly, if they agree to that most sure and irrefragible axiom of Gerson, viz., "All the Apostolical Constitutions or Laws made in favour of the Pope are understood, and ought to be understood where the Ecclesiastical Republic may neither directly nor indirectly, neither in part nor in the whole, seem to suffer injury:[1]" If, I say, the Lord Bishops assent to these Principles which I have firmly proved, and which are all deduced from the doctrine and practice of the holy Fathers, then the

[1] Omnes Constitutiones Apostolicæ sive Leges factæ in favorem Papæ, intelliguntur et intelligi debent, ubi Respublica Ecclesiastica directè vel indirectè, in parte vel in toto, detrimento non videtur subesse.

consequence follows without difficulty, that the recourse to Rome being embarrassed, and continuing so for seven years, the power which they possessed in ancient times, and which for many ages they exercised, devolves upon them, so as to enable them to appoint, absolve, and dispense in all those cases which until that time were reserved exclusively to the Apostolic See: and that not by presumptive right or any arbitrary *epikeia*, nor by way of *delegated* jurisdiction, but according to the constant opinion of the Church on the subject of the jurisdiction of Bishops, even recognizing it in such cases to be an *ordinary* jurisdiction although temporary, and though upon the termination of the rupture, it returns to the Supreme Pontiff, according to the Principles we have established.

XIV. It will further confirm this doctrine to call to mind the quotation made in the Fifth Principle[1] from Hincmar of Rheims, who, commenting upon the celebrated saying of Pope Leo I., viz., "*Manet Petri Privilegium, ubi ex ipsius æquitate fertur judicium,*" infers from it that whenever the Successors of Peter err from this equity, their decrees lose all their force, "Quâ sententiâ constat, quia non manet Petri privilegium, ubi ex ipsius æquitate non fertur judicium." Now it is evident that for the Pope to prohibit the Portuguese Bishops from granting dispensations, Bishops who by Divine Right are lawful Pastors of the kingdom, and this, too, when such dispensations are notoriously just and necessary, would be a mandate far removed from all equity, and one from which great scandal would necessarily follow. Of such cases we have before seen the opinion of Pope Alexander III. in Chapter *Cum teneamur*, *De Præbendis*, "If it cannot be done without offence, we shall not take it ill that you do not think fit to execute our mandate.[2]" By which the Supreme Pontiff shows that to be the true doctrine which we have just explained, and which is that of all ancient Canonists and Theologians, as it is of Jordano Brici, a celebrated Italian Doctor of the time of Eugenius IV., who, in a treatise published by Baluze in the third volume of his *Miscellanea*, says thus:— "As to the words '*Quodcunque ligaveris*,' the answer is, it is

[1] See Part i. Principle v. § vi.

[2] Si non potest sine scandalo provideri, æquanimiter sustinemus, si mandatum nostrum non duxeris exequendum.

true, if you act rightly and through the medium of justice, '*clave non errante.*' So Master Nicolas de Lyra, upon S. Matthew xvi., *Quodcunque ligaveris,* to wit, the *proper* use of the Keys on earth GOD approves in heaven, but otherwise not. The words are those of Nicolas de Lyra.[1]" But before all others, the doctrine had been taught by the Abbat S. Columbanus, in a Letter to Pope Boniface:—"So long will the power abide with you as right reason shall remain, for he is the certain Key-keeper of the Kingdom of Heaven, who by a just sentence opens it to those who are worthy, and shuts it upon the unworthy.[2]"

[1] Ad id quod dicitur, *Quodcunque ligaveris,* respondetur quod verum est, si justè faciat, et mediante justitia, clave non errante. Idem Magister Nicolaus de Lyra in dicto cap. xvi. Matt., *Quodcunque ligaveris,* scilicet supposito in terrâ debito usu clavis, DEUS approbat in cœlis, aliter non. Verba sunt Nicolai de Lyra.

[2] Tamdiù potestas apud vos erit, quamdiù recta ratio permanserit. Ille enim certus regni cœlestis clavicularius est, qui dignis per veram sententiam asserit et indignis claudit.

THE CONCLUSION

DRAWN FROM THE FOREGOING PRINCIPLES.

ANSWER TO THE ARGUMENT DRAWN FROM THE FIRST PROPOSITION CONDEMNED BY INNOCENT XI., ALSO TO THAT TAKEN FROM THE DECLARATION OF THE SACRED CONGREGATION OF THE COUNCIL GIVEN BY RIGANTIUS, AND FROM THE OATH TAKEN BY THE BISHOPS AT THEIR CONSECRATION AND THE FORMULA WHICH THEY USE WHEN THEY CALL THEMSELVES *Bishops by the grace of the Holy and Apostolic See.*

REFLECTIONS ON THE DOCTRINE OF THE GALLICAN THEOLOGIANS ON THE CELEBRATED QUESTION BETWEEN KING JOHN IV. AND POPE INNOCENT X.

I. From the foregoing ten Principles, which can be denied only by those who are prejudiced by flattery or ignorance, the conclusion follows in the last place, that, considering the number of years during which all intercourse with Rome has been stopped, the Bishops may, and ought to, reassume their primitive authority and to grant dispensations for marriage; since the same, and even greater, causes demand it, as would undoubtedly have induced the Supreme Pontiff to have done so, especially in the case of the Grandees and Fidalgos of the Court.

II. Nor does the condemnation of the First Proposition, amongst those condemned by Innocent XI. in 1679, offer any obstacle to us. It was this:—"It is not unlawful in conferring

the Sacraments to follow a probable opinion of the validity of the Sacrament, leaving the safer opinion.[1]" For I answer in the first place, that this Pontifical condemnation is to be understood of those Sacraments only whose matter and form are not under the jurisdiction of the Church, such as Baptism, Orders, and all the other Sacraments except Marriage. The reason is this; that in the case of those Sacraments the Church cannot supply what is wanting in matter or form, since they all depend solely upon the institution of CHRIST. But in Marriage, since the matter only becomes inept through the extrinsic impediment of the Church, if this be withdrawn by means of a dispensation the same matter becomes fit for the Sacrament. And this is the reason why the Theologians who wrote upon the condemned propositions all agreed with Father Viva, that the condemnation of which we are speaking does not comprehend the opinions which hold good concerning the jurisdiction of the Minister, because as the Church can supply this jurisdiction, the validity of the Sacrament is not endangered, which was the evil contemplated by the Pope, and which he desired to avoid when he condemned, in the administration of the Sacraments, the use of the probable opinion, the more safe being laid aside. And thus those Theologians determine that the Priest does not go contrary to this Pontifical condemnation, who absolves with only the probable opinion of his jurisdiction. Therefore, in like manner, he does not offend against the Pope's definition, who, with the probable opinion of having a lawful dispensation, contracts marriage with his relative: because the condemnation only applies to those cases in which the Church cannot supply the deficiency in what is essential to the validity of the Sacrament.

III. I say in the second place that the Pontifical condemnation applies only where the validity of the Sacrament is treated of. And there are many cases in which Marriage may be celebrated even between the Faithful, without being a Sacrament. In the opinion of the Subtile[2] Doctor and his School, it is not a Sacrament whenever it is celebrated *by means of signs*, as is done in the case of dumb persons; in the opinion of the three

[1] Non est illicitum in conferendis Sacramentis sequi opinionem probabilem de valore Sacramenti, relictâ tutiore.

[2] [*i. e.*, Duns Scotus.—TRANSL.]

great Dominicans, Durandus Bishop of Mende, Cardinal Cajetan, and Melchior Canus, whenever the contracting parties are married *by proxy*, it is no Sacrament[1]; in the opinion of William of Paris, Cardinal Toledo, William Estius, and the learned Thomists, Peter de Palude, Melchior Canus, Vincent Contenson, and Natalis Alexander, and of many others of this and other schools, (whom the modern Dominican, Jacinte Serry, of the Sorbonne, refers to in his *Vindications of Canus*, Chapter vii.) it is no Sacrament whenever the officiating minister is not the Parish Priest or a Priest acting in his stead, as was the case before the Council of Trent throughout the Church in clandestine marriages, and is so still in France and other Provinces which refused to receive the Council in this matter. It is no Sacrament in the opinion of those who teach with Basilius Pontius, and Rebellus, when the intention necessary to the Sacrament is wanting in either of the contracting parties, although the marriage is valid by reason of the contract, but not by reason of the Sacrament, as Launoy observes in his treatise *De Regia in Matrimonium potestate*, Art. ii. Chapter viii. The doctrine of Bellarmine, in Book i., Chap. xxii., *De Matrimonio*, is therefore false, or at least not certain, where he declares that, by CHRIST's institution, there can be no marriage between the Faithful without there being also a Sacrament. Therefore, in like manner, there are many cases in which the Faithful may lawfully contract marriage, although no Sacrament is made; and as the definition of Innocent speaks only of the case in which the *validity* of the Sacrament is treated of, it follows that our doctrine may hold in many cases without incurring the Pontifical censure, because in many the marriage-contract may often be celebrated without there being a Sacrament.

IV. My third answer is this; that in the opinion of all Theologians, when Innocent defined it to be unlawful, in the administration of the Sacraments, to use the probable opinion concerning the validity of the Sacrament to the exclusion of the more safe, he did not oppose the more safe opinion to that which is morally certain although less safe, but only to that which is *speculatively* probable but not *practically*. Hence all agree

[1] The grounds for this opinion may be seen in Canus, Book viii. Chapter v. *De Locis Theologicis.*

that the opinion of those is not included in this condemnation, who hold that the imperfect contrition which consists in *attrition*, is sufficient for the proximate matter of the Sacrament of Penance, although the opinion which requires perfect contrition is the more safe. Because, they say, the sufficiency of attrition, or initial love, is a doctrine morally certain, and the Pope does not condemn the acting upon doctrines which are morally certain. Since the contrary would be a most serious and even an insupportable burden, that is, if we were always compelled to follow the most safe opinion, and if the morally certain opinion did not suffice. Now it is undeniable that our doctrine upon the subject of the Power of the Bishops during the rupture with Rome has so many foundations that no unprejudiced Theologian who will weigh them can fail to hold it as at least very probable in practice and even as morally certain; and consequently the censure of Innocent does not include it, which speaks only of those doctrines which, besides being less safe, do not exceed the limits of simple opinion.

V. I add, in the fourth and last place, that many of these Propositions are condemned merely generally, and it was not the intention either of the Church or of the Supreme Pontiff to condemn under these heads rare cases—cases of urgent necessity such as ours. And thus we see that in the administration of the Sacraments of Baptism and Penance, many opinions are acted upon, through necessity, which are certainly not the safest, without however its being considered contrary to that generality with which the Pope condemned the Propositions which we are speaking of. In fact the Jesuit, Martin Esparza, who was one of the Counsellors of Innocent XI. on occasion of the condemnation of these Propositions, testifies, in a letter written from Rome, April 6th, 1680, that the cause of the condemnation of the Proposition we speak of was its generality:—"That first Proposition was condemned on account of its unlimited xtent and generality, &c." Father Concina makes mention, amongst others, of this letter.

VI. Nor is the Declaration of the Sacred Congregation of the Council, which Rigantius mentions,[1] in the notes to the forty-ninth Rule of the Court of Chancery, any obstacle to us, where

1 Rigan. tom. iv. p. 6.

he relates that in 1660 the Archbishop of Saragossa made the following inquiry: "Whether a Bishop, in case of urgent necessity, can, before the marriage is contracted, grant a dispensation on a public impediment?" and that the Sacred Congregation returned an answer in the negative. He adds that an *affirmative* judgment upon the case was in another Congregation declared to be *"false and rash."*

In the first place, I say that, in matters of doctrine, the Bishops neither recognize nor ought to recognize any other superior than a General Council or the Pope, solemnly defining or commanding. And the more so, because, in the opinion of the best Canonists and Theologians even of Spain, the replies of the Sacred Congregation are in themselves nothing more than doctrinal opinions which have no greater authority in themselves than has the opinion of other individual Theologians. Amongst the Canonists, the famous Gonzales held this opinion in the Preface to his Commentary on the Decretals, No. 57. Amongst the Theologians, the great Tapia,[1] (a Dominican, and Archbishop of Seville,) in his *Catena Moralis,* Book iv. Quæst. viii. Art. 8, to say nothing of Bonacina,[2] Disp. i. *de Legibus,* Quest. i. Part i., and Sanchez,[3] Book viii., *de Matrimonio,* Disp. ii. No. 10.

In the second place, whatever be the authority of this Congregation, this its Declaration ought to have no authority with the Bishops, because it was neither promulgated throughout the Provinces of Christendom, nor solemnly intimated to the Bishops, as was necessary to be done in a matter so serious, of such general concern, and so derogatory to the right of the Bishops. See Peter de Marca, Book ii., Chapter xv., where he shows this doctrine to be maintained and proved by the strongest

[1] Peter Tapia, born at Vittoria, in the Diocese of Salamanca, in 1582, of the Order of S. Dominic, and afterwards Archbishop of Seville, was distinguished for his learning, excellent life, and for his management of his Diocese. He was a strenuous defender of the privileges of the Church.—TRANSL.

[2] Martin Bonacina, a native of Milan, died in 1631, on his way from Rome to Vienna, whither he had been sent by Pope Urban VIII. as Nuncio. His works in two volumes folio, have been printed at Paris and Lyons.—TRANSL.

[3] Thomas Sanchez, a Spanish Jesuit, who died in 1660. Amongst other works he wrote the Treatise on Marriage referred to, which is justly reprobated for its indelicacy.—TRANSL.

reasoning, by "the Panormitan, and almost all the Gallican, German, and Spanish writers, and even by Cajetan, one of the *empurpled* Fathers." See also Van Espen's treatise, *de promulgatione Legum Ecclesiasticarum*, Chapter ii., and Gibert's Dissertation, *Circa necessitatem publicationis Canonum*, (which will be found at the beginning of Volume i. of his works,) and Natalis Alexander in his Moral Theology, Book iv., Rule 25.

In the third place: If it be true, as Rigantius says, that the Sacred Congregation of the Council, in 1660, resolved that Bishops could not dispense with public impediments to marriage, even in cases of the most urgent necessity, it is nevertheless true that the same Council in 1673 decided that *they could*, as Gerbais, the well-known Doctor of the Sorbonne, testifies in his discourse on the impediments to marriage, which will be found at the end of his treatise upon "the Power of the Church and of Princes" over these impediments.

Lastly, if we look well into the Question and Declaration which Rigantius has given, we shall find that they relate to a very different matter from that which is now being agitated in Portugal. For to ask whether the Bishops, in a case of urgent necessity, can dispense with public impediments, is not the same thing as to ask whether, when all intercourse with Rome is absolutely stopped, the power of making provision for them and other matters devolves upon the Bishops. And the reply of the Congregation, viz., that the urgent necessity was not sufficient to enable the Bishops to grant the dispensation in this case, is not the same thing as to say that they cannot do so when the intercourse is prevented. In a word, in the case specified by Rigantius, the jurisdiction was to have been given to the Bishops through title of necessity, and it assumed that they could dispense because there existed a necessity for the dispensation. But in our case there is another thing very important and observable, viz., that in it, before any *necessity*, it is shown that Bishops have jurisdiction, and that they can dispense, not because there is necessity, nor by presumption, but absolutely, because they possess an *ordinary* jurisdiction to dispense at all times when necessity calls for it. Because we showed, reducing the matter to its principles, that it was solely by the consent of the Bishops that the Pope could reserve to him-

self marriage dispensations, and that when the Bishops gave their consent it was upon the necessary and indispensable condition that when the intercourse with Rome should be stopped in any way whatever, (for which they were not themselves answerable,) the ancient right of dispensing should return to them as the proper and ordinary right of the Episcopal order. Whence, lastly, it was concluded that the reversion of this right is not by way of interpretation of the will of the Pope, but, verily, by way of the tacit and necessary compact which the Bishops made with the Apostolic See when they consented to the Reservations, from which compact they cannot draw back, because by Divine Law they are bound to provide for and feed their sheep whenever need requires it, and they cannot receive the countenance of the Supreme Pontiff.

VIII. And from this we may answer a third objection which may be urged against our doctrine, namely, that the Bishops, at their Consecration, all take an oath to preserve the rights of the Apostolic See, and to defend all its regulations, provisions, and reservations. We answer then, that it is notorious that the oath contains involved in it the exception which the case we are considering, and other similar cases afford, when the Pope, owing to some lasting impediment, for which the Bishops themselves are in no way answerable, is either unable or unwilling to afford aid to the public necessities of the Kingdom or Province.

This is the ground upon which the French Theologians took their stand in 1650, when they solemnly voted that, notwithstanding the Confirmation of Bishops was reserved to the Pope, those of Portugal might be consecrated without the previous concurrence of the Pontiff, on account of the urgent want of Pastors under which the whole kingdom laboured, the Supreme Pontiff himself having, for various political reasons, cut off all intercourse. Whence the Theologians argued thus; that Bishops being necessary, both by the Divine and Natural Law, and the reservation of their Confirmation being a merely human enactment, not obligatory in case of necessity, even when this necessity was not actually extreme nor even very serious, Bishops might be consecrated without the Papal Confirmation :—"That there shall be Bishops in the Church, the Law of God commands, the Natural Law orders. That Reservation is made by an

human Law, which is not obligatory, not only in cases which are of *extreme* necessity, but even in those which are of *very serious* necessity. Hence, when in any way recourse cannot be had, the Bishops may be consecrated (taking into consideration the present condition of things,) without the Papal Confirmation.[1]"

Thus did our own and foreign Theologians argue in the time of King John IV., as appears from a book entitled *Balatus Ovium*, printed at Paris, in 1651. And it ought to be remarked that the question then raised, viz., concerning the Consecration of Bishops, was of incomparably more importance than that which is now under discussion relating to the granting of dispensations for marriage; so much more important as the Church and eternal salvation depend more upon the validity of the Sacrament of Orders, than upon that of the Sacrament of Matrimony. Now, without valid Orders there can be neither the true Sacrifice nor true Absolution. Whereas if marriage be contracted in good faith it may benefit the republic without any formal fault of the contracting parties. Nevertheless, those Theologians agreed that Bishops might safely be consecrated, although the Papal confirmation were wanting; because they were of opinion that as this confirmation was only required by the human law, the Pope would be unreasonable, if, being unwilling to grant it himself, he should object to the Bishops giving it to each other, as was done anciently: our Theologians, then, and those of France, took their stand upon this principle, viz., that where the Pope reserved to himself the confirmation of Bishops, the latter gave their consent, dependent upon the condition, that in the event of his Holiness not being able, or not being reasonably willing, to give the confirmation, the power should devolve upon the Bishops themselves, as the ancient Canons permitted them.

For the same reason the Bishop of Cambrai, Peter d'Ailly, (and with him all other Theologians who were the friends of

[1] Episcopos in Ecclesiâ esse Jus Divinum imperat, Jus Naturale jubet.—Reservatio illa facta est de jure humano quod non obligat in necessitate, non extremâ tantum, sed ne in gravissimâ quidem. Igitur cum modo Recursus non detur, possunt Episcopi sine confirmatione Pontificis, considerato præsenti statu, consecrari.—Balat. Ovium, pp. 225, 226.

peace,) taught in 1409, that during the great Schism a General Council might be convoked and celebrated, although there was no Pope, because the laws which reserved this right to the Pope ceased in a case of this kind, where the Church was without a Pope on account of the Schism which oppressed Her. See the discourse of D'Ailly, given by Marteune in vol. ii. of the *Anecdota*, p. 1409.

IX. If now I am told that in the time of King John, it was the Pope who would not confirm the Bishops, and now it is the King who refuses to allow the dispensations from Rome; I answer that it matters nothing to our argument, whether the intercourse be impeded by the Pope or by the King, so long as neither the Bishops nor their people are in fault in the matter. As the Theologians of John IV., when he had been once proclaimed King by the States of the Kingdom, in virtue of the rights of the house of Braganza, did not concern themselves that the Pope, prejudiced in favour of the rights of Castille, disputed the validity of John's right to the throne, and therefore refused to confirm the Bishops who were nominated by him, so we, in the present rupture, ought not to embarrass ourselves with the question, who has justice on his side, because in both cases, whether the interruption of intercourse proceeded from the Pope or from the King, the fact is the same, that the intercourse is interrupted without any fault on the part of the vassals, and that throughout the kingdom the greatest want of dispensations is experienced: and the point is, that the Bishops, as vassals, are bound to obey their King, and as Pastors, to provide for the spiritual necessities of their flocks. Therefore as the Theologians of King John looked no farther than this, that he was their recognized and lawful Sovereign, and that the whole kingdom was suffering from the want of Bishops; so now, the Theologians and Bishops have only to take into consideration, 1. That our Lord the King having prohibited intercourse with Rome, all are bound to abstain from such intercourse and to presume the prohibition to be just: and 2. That in consequence of this rupture, the kingdom receives great injury from the want of dispensations, without it being in the power of the people either to hinder or avoid it. For, as we have shown above, in matters which are not intrinsically evil, it is not the

province of the people to inquire into the reasons for the command, but to obey, always presuming the best of those who represent God on earth, viz., Kings and Sovereign Princes; but on the contrary, scrupling to blame even in thought those who are declared to be sacred by laws human and Divine, and remembering always the admirable saying of S. Cyril upon Psalm l.: "He is impious who says to a King, 'thou actest impiously.'"

X. In order that no difficulty may remain unanswered, we will in the fourth place notice another objection to our position, which being solved, the doctrine of the preceding Principles will be completely illustrated. The objection is this, that all the Bishops in Christendom acknowledge that all the power which they possess is derived to them immediately from the Pope, and that they only have, and can have, what he gives to them, because all style themselves Bishops of such and such a place, "*by the grace of* God *and of the Holy Apostolic See.*" Whence it appears to be inferred that, if the Pope does not choose that the Bishops should dispense during the time of rupture, they cannot either lawfully or validly do so. A specious argument which I was unwilling to pass over, because many persons who have been prejudiced by the Italian opinions in which they have been brought up, lay a stress upon it, which they ought not to do who clearly apprehend the Principles which have been established, and what we are now about finally to observe.

I say then, in the first place, that the particular opinions of these Bishops or those ought not to prejudice the rights and privileges which the Church hath always recognized in the Episcopal Order, founded equally on the fulness in which Christ instituted it in the Gospel, and on the notion of it which the first ages have left to us. We have already shown, by the testimonies of the Holy Fathers and Sacred Councils, how each Bishop was regarded as supreme Pastor and absolute administrator in his Diocese, "Cum habeat in Ecclesiæ administratione voluntatis suæ arbitrium liberum unusquisque Præpositus." (S. Cyp. Ep. 72.) We have shown that this power and jurisdiction was derived to them immediately from Christ, and that this was the view of the whole Church for twelve centuries.

For in the middle of the ninth, the Fathers of the Eighth General Synod, who deposed Photius, protested "IN VIRTUE OF THE POWER GIVEN TO US IN THE HOLY SPIRIT, BY OUR FIRST AND GREAT PONTIFF, THE REDEEMER AND SAVIOUR OF ALL MEN." And even in the middle of the twelfth century, S. Bernard wrote thus to the Pope Eugenius III. "Thou art in error if thou thinkest that as it is the *chief*, so thy power is the *only* power, instituted by GOD.[1]" And in the beginning of the fourteenth, Durandus Bishop of Mende, propounded it as a received doctrine, "That the Bishops received their power and honour from GOD, by Whom they were constituted in the place of the Apostles.[2]" After him came the three famous Dominicans, Peter de Palude, John de Torquemada, and Thomas de Vio Cajetan, illustrious by their profession, learning, and dignity; the first, in his Treatise on the immediate source of Ecclesiastical power, says, "That the Bishops are mere Procurators for the Pope, whom, as such, the Pope may at any time remove from their office or restrain in the use of their authority, without there having been any fault on their part." The second teaches in his work, *de Ecclesiâ*, "That the Pontificate alone, of all the jurisdictions in the Church, comes immediately from CHRIST: so that even the power and jurisdiction of the other Apostles proceeded immediately from Peter." A doctrine which even Bellarmine himself allowed to be contrary to the Gospel, and which the Faculty of Paris declared to be heretical, as John Major testifies. The third taught, in his Treatise on the authority of the Pope and General Council, *that the Church is the born slave of the Roman Pontiff!* [3] an expression horrible to all who have the smallest regard for antiquity.

XI. These and other like novelties were always opposed by the Theologians of the University of Paris, and they were opposed at Trent, by the Bishops of France, and by the Bishops and Theologians of Spain, amongst whom were Francisco Bartholomeo dos Martyres,[4] the Archbishop of Braga and Primate,

[1] Erras si ut summam ita solam à DEO tuam existimas potestatem.

[2] Quòd Episcopi potestatem et honorem receperunt à DEO, à Quo Episcopi loco Apostolorum constituti sunt.

[3] Ecclesia serva nata Romani Pontificis.

[4] F. Bart. dos Martyres, surnamed the Blessed or the Happy. This admirable

and Diogo de Payva de Andrade. But the Papal chair began on the one hand to evince displeasure at all these doctrines which opposed its despotism, and on the other hand, the Jesuits had possession of almost all the Schools, so that the ancient doctrine, which for so many ages was the only one known in the Church, came to be restricted to France, and to be the characteristic of the Sorbonne.

Are we, then, to think that all the Bishops of the present age are in error in styling themselves "*Bishops by the grace of the Apostolic See*"? By no means, nor would Catholic piety allow us to say such a thing. I say then, that it is one thing for the Bishops to style themselves Bishops by the grace of the Apostolic See, and another to confess that all their power and jurisdiction are derived to them immediately from the Apostolic See, and not from CHRIST. For the Bishops at the Council of Trent styled themselves so, yet as Pallavicini and Sarpi relate, those of France and Spain contended boldly for the immediate derivation of the Episcopal power from CHRIST. Further; S. Gregory the Great, in Book i., Epistle xxxvi.,[1] to Peter the Subdeacon, writes, that the Bishops are Pastors by the liberality of S. Peter, "*ex Petri largitate,*" and yet the same Pope, in Book viii., Epistle xxx.,[2] blames S. Eulogius of Alexandria, for giving him, in his letter, the title of *Universal Bishop,* because to call him *Universal* Bishop is, he says, to offend against the rights of other Bishops, by indicating that the whole power is in the Pope; whereas he ought, on the contrary, to show in every thing that the same CHRIST, Who made Peter Primate of the Church, Himself made the other Apostles Bishops, and made them all brethren and companions in power, although in a different way. Whence the great Gregory concludes that Eulogius should in no wise again call him *Universal* Bishop,[3] as it was a title of pride and offensive to the authority of the other Bishops, whom he held and ought to hold as brethren: "You

prelate was born in 1514, and after a life of the most primitive piety and entire devotion, died near Viana, whither he had gone on foot to catechize the poor. He is said also to have proceeded on foot to the Council of Trent, where he was one of the warmest advocates for a reform in the Church, and especially amongst the Cardinals. His canonization has long been expected. He was the friend of S. Charles Borromeo.—TRANSL.

[1] S. Greg. tom. vii. p. 49. [2] Ibid. tom. viii. p. 31. [3] Ibid.

have been careful to use that word of proud appellation, calling me Universal Pope, which I request your holiness not to do again, BECAUSE THAT IS TAKEN FROM YOU, WHICH IS GIVEN TO ANOTHER BEYOND WHAT REASON DEMANDS.[1]" And again, "I know who I am, and who you are: for in place you are my brother, in character my father. Nor do I take that as an honour to myself, by which I perceive that my brethren lose their honour.[2]"

XII. For the same reason, Pope Eugenius IV., at the General Council of Florence, defining the prerogatives annexed by CHRIST to the Primacy of the Pope, and defining them in more honourable and ample terms than had ever been heard before, as thus: "That the Roman Pontiff is the successor of the Blessed Peter, and Very Vicar of CHRIST, and Head of the whole Church, and Father and Doctor of all Christians, and that plenary power to feed, rule, and govern the whole Church, was given to him by our LORD JESUS CHRIST,[3]" &c.: nevertheless, lest we should think that all the power of CHRIST's institution was in the Pope alone, concludes the decree with this clause, "Saving the privileges of the Patriarchs and their rights.[4]" The Primacy of the Pope may therefore well subsist with the rights of the Bishops; the Pope may have, by Divine right, a plenary power, and nevertheless, the Bishops may retain the share given also to them by CHRIST, since the same LORD Who said to Peter, "Whatsoever thou shalt bind . . . . . Feed My Sheep . . ." said also to the other Apostles, "Whatsoever ye shall bind . . . . Go ye and teach all nations . . . . As My Father hath sent Me, so send I you. . . . .[5]"

[1] Superbæ appellationis verbum, Universalem me Papam dicentes, imprimere curastis. Quod peto dulcissima mihi sanctitas vestra ultra non faciat. QUIA VOBIS SUBTRAHITUR, QUOD ALTERI PLUSQUAM RATIO EXIGIT PRÆBETUR.

[2] Scio qui sum, qui estis: loco enim mihi fratres estis, moribus patres. Nec honorem esse deputo, in quo fratres meos honorem suum perdere cognosco.

[3] Romanum Pontificem successorem esse Beati Petri et verum CHRISTI Vicarium, totiusque Ecclesiæ Caput, et omnium Christianorum Patrem ac Doctorem existere: eique pascendi, regendi, ac gubernandi universalem Ecclesiam à DOMINO nostro JESU CHRISTO plenam potestatem traditam esse.

[4] Salvis privilegiis Patriarcharum, et juribus eorum.

[5] Quodcumque alligaveritis, &c. Ite . . . . docete . . . . sicut misit Me PATER, et Ego mitto vos.

XIII. It only remains now to consider and explain the sense in which the Bishops, without prejudice to their rights, may and do properly style themselves "*Bishops by the grace of the Apostolic See.*" I say then, in the third place, that the Bishops may in many ways attribute their authority to the Apostolic See, without by so doing denying their power to be as immediately derived from CHRIST, as that of the Pope is. 1. Because the Apostolic See is the centre of Catholic unity, as S. Cyprian declares in his Epistle to Cornelius, "They dare to betake themselves to the chair of Peter, and to the chief Church, WHENCE SACERDOTAL UNITY HAD ITS RISE.[1]" 2. Because it is the constant doctrine of the Fathers, that the Episcopate had its beginning in Peter, which throughout the Church is *One*, only divided into many: not because S. Peter alone was Bishop, but because he was the first to whom CHRIST gave the power, and who, in the name of the Church, received it. So S. Augustine, in the one hundred and eighteenth Treatise on S. John, No. iv. "When all were asked, Peter alone answered, THOU ART CHRIST, and to him it is said, 'I WILL GIVE TO THEE THE KEYS,' as though he alone had received the power of binding and loosing: whereas he spoke that in the name of all, and received that power, together with all, as peforming the part of the unity of all.[2]" 3. Because as Pope Innocent observes in his Epistle to Decentius Bishop of Eugubium, all the Western Churches[3] received from Rome both the Light of the Faith and their first Bishops. Whence it follows, that all Bishops of the Latin Church, in the present day, are descended from those early Bishops who were originally sent by the Roman Pontiffs into Africa, France, Spain, Italy and Germany.

XIV. If, however, any one should maintain that at least in virtue of their confirmation, the Bishops now hold immediately from the Pope; and that, therefore, it is from the Pope alone, that they received, immediately, all their power; I reply, first,

[1] Navigare audent ad Petri Cathedram atque ad Ecclesiam principalem, UNDE UNITAS SACERDOTALIS EXORTA EST.—S. Cyp. Ep. lv. p. 86.

[2] Cum omnes essent interrogati, solus Petrus respondit, TU ES CHRISTUS. Et ei dicitur: TIBI DABO, &c., tanquam ligandi ac solvendi solus acceperit potestatem: cùm et illud unus pro omnibus dixerit, et hoc cùm omnibus, tanquam personam gerens unitatis acceperit.—S. Aug. tom iii. pt. ii., p. 800.

[3] Tom ii. p. 50, Quesnel's Edition.

that this very confirmation spoken of is one of those *Reservations* which the Pope holds merely by the consent of the Bishops. For, although the Pope, besides the title of Supreme Pontiff of the whole Church, enjoys that of Patriarch of the West, the confirmation of Bishops always, before these Reservations, belonged to the Metropolitan or Provincial Synod: as appears from the Canons of Nicæa, Antioch, Laodicea, Carthage, and Arles, and from other documents quoted by Dupin in Dissert. i. § xii. And even by the new law of the Decretals of Gregory IX., the confirmation of suffragans belonged to the Metropolitan, as was shown in the beginning of this work, and which Don Rodrigo da Cunha confirms in the History of Braga, where he relates that, in 1114, great contentions arose between Mauritius Archbishop of Braga, and Bernard Archbishop of Toledo, because the latter had interfered with the confirmation of the Bishop of Lugo, "preventing Mauritius from doing it, to whom the right belonged, on account of his being Metropolitan of that city." And again, in Chapter xii., he states that the Archbishop de Payo, in 1124, confirmed the election of the Bishop of Coimbra, as of a Prelate his suffragan.

I reply, further, that it cannot be argued, because the Supreme Pontiff confirms the Bishops, that therefore the power which the Bishops have, is derived to them immediately from the Pope, and not from CHRIST. For, granting the acceptation of the election, (which is what we mean by confirmation,) we ought to speak of the acceptation of Bishops by the Pope, as we speak of the acceptation of the Pope by the Church. The Church accepts as Pope, him whom the Cardinals elect, and this acceptation being granted, all allow, and ought to allow, that he is elected by Divine right, Primate of the whole Church, and that he receives immediately from CHRIST the plenitude of the Papal power. So also whenever the Pope accepts the elections of Bishops, we must conclude that it is from CHRIST, that the Bishops receive their power, and not from the Pope.

The reason of this is, that both in the Pope and in the Bishops, the jurisdiction annexed to their office is one thing, the designation of the person who is to exercise it, another. The designation of the Bishop comes from the Pope as an *extrinsic* condition, but the jurisdiction is given immediately by CHRIST,

as an *intrinsic* quality of the Episcopal Order. So also the designation of the Pope comes from the election of the Church, but all allow that jurisdiction comes to him immediately from CHRIST Himself, as from the only Author of the Primacy, otherwise we should say that when it was the Metropolitan who confirmed the suffragans, and they made oath of obedience to him, the Metropolitan and not CHRIST gave their jurisdiction to the suffragans; which is contrary to the mind of all antiquity, as we have already shown.

END OF PART THE FIRST.

PART THE SECOND.

CONTAINING DOCUMENTS AND PRECEDENTS AFFORDED IN DIFFERENT AGES, BY THEOLOGIANS, BISHOPS AND CATHOLIC UNIVERSITIES, IN PROOF THAT WHEN THE INTERCOURSE WITH ROME IS IMPEDED, WHETHER BY SCHISMS, OR WARS, OR PESTILENCE, OR BY THE DECREES OF SOVEREIGN PRINCES, THE POWER DEVOLVES UPON THE BISHOPS OF PROVIDING AND DISPENSING IN ALL THE PAPAL CASES, WHENEVER THE NECESSITY OR ADVANTAGE OF THE PEOPLE REQUIRES IT.

DOCUMENT 1.

WILLIAM OCCAM, a Minorite, in Book ii. of his Dialogues *de Potestate Papæ et Cleri*, Chap. 28. "Another case would be, if the Catholics were so oppressed by intestine wars, or by infidels, or schismatics, or by some other means, that they could have no actual recourse to Rome. Then the different Provinces might meet together to appoint one head over them. For then it would be lawful for any Provinces (which could and wished to, do it,) to appoint one Primate for themselves. And thus, some Provinces in one part of the world might appoint over themselves one Primate, and others, in another part, another Primate.[1]"

Then stating in opposition to this the General Canons on the

[1] Ed. of Goldast. tom. ii. P. 1. p. 817.

contrary side, he answers thus: "It is answered that when recourse can be had to Rome, no new dignity is to be established without the Pope's leave; in which case the Sacred Canons speak. But when recourse cannot be had to a Catholic Pope, then, for the common good, it is lawful to constitute a new dignity, to last at least until the intercourse with Rome is renewed."

Document 2.

Gerson in his Treatise, *de modo se habendi tempore schismatis*, near the end. "The third document relates to cases reserved to the Pope, dispensations, and other matters of conscience and public justice. Neutrals seem to have a sufficient recourse to their Ordinaries upon whom the power devolves, speaking generally according to their opinion.[1]"

Document 3.

Bossuet, Bishop of Meaux, in his defence of the Declaration of the Gallican Clergy, Book v. Chap. 8. "When obedience is withdrawn, what else remains than that the Church be managed in the mean time by Episcopal government, until the Supreme Pontiff is created?"

Document 4.

Louis Thomassinus, in his Discipline relating to Benefices, Part 2, Book iii. Chap. 28, No. x. "During the Schism of Avignon, when some nations withdrew from all obedience to any of the Supreme Pontiffs, as in a sacred interregnum, the Bishops seem to have recovered that full power of dispensing which they possessed originally. And in the Council of Pisa, in 1409, Pope Alexander V. ratified all the dispensations they had granted in the interim.[2]"

Document 5.

Peter de Marca, Archbishop of Paris, in Book iii. Chap. 6, No. vi., *de Concordiâ Sacerdotii et Imperii.* "It cannot be dissembled that the administration of the Church which was obtained, *jure Divino*, by the Bishops was not taken from them

[1] Gerson, tom. ii. p. 6, 7. [2] Thomassinus, tom. ii. p. 334, Paris Ed. of 1691.

by any Decretals, although the manner of exercising that power was variously prescribed by various constitutions, according to the circumstances of the times. Therefore, if such times should occur as that the necessity of governing the Church should compel the Bishops to depart from the more modern regulations, nothing hinders that the Divine and natural law should take place, those forms which the new law has prescribed being omitted. For example, if there be a vacancy in the Papal chair for many years, if the approaches to the city be in the hands of an enemy so that the Pontiff cannot be visited with safety, or if any other similar and serious chances should occur, the Church should be administered by this Divine Law, or by that old Ecclesiastical Law.[1]"

Document 6.

Barthelius, a modern German canonist, in his additions to the Canon Law, Book i. Tit. 33. "Impediments to marriage are reserved by mere custom. But because in remote parts it was afterwards too expensive and too difficult to have recourse to Rome, the Bishops began to use their power again, when the recourse was too difficult, or too expensive, or there was danger in delay. And in this case the Doctors say, that from being a Papal it becomes an Episcopal case. Upon which it should be remarked that no one need be scrupulous, in practice, about making a Papal cause Episcopal, if there be a Canonical cause, since the original faculty of the Bishops returns to them which the Pontiff has reserved to himself by custom only.[2]"

Document 7.

John Gerbais, a Doctor of the University of Paris, who flourished at the end of the last century, in his Discourse upon the impediments to marriage, at the end of his Treatise on the power of the Church and of Princes in impediments to marriage, speaking of the public impediments, and the dispensations necessary in order to be able to marry within the prohibited de-

[1] Peter de Marca, Part i. p. 147, Paris Ed. of 1669.

[2] Barthelius, cited by Febronius, *de statu Eccl.* Ch. vi, § 6, p. 430. Bullioni, 1763.

grees, says thus: "There is not a single text in the Canon Law which reserves the faculty of dispensing within the prohibited degrees, to the Pope alone, to the exclusion of the Bishops. And why then have the Bishops no power to dispense? And why should this power be disputed? at least when the parties are poor, the distance great, and the cause urgent." He adds, that when the Sacred Congregation of the Council were consulted upon this subject, in 1673, they were of opinion that "the dispensations granted by the Bishops, under the proposed circumstances, were valid.[1]"

He then goes on to the contrary side of the argument, viz., that if Bishops have not this power of granting dispensations in the public impediments to marriage, it seems to be an act of usurpation in them, to attempt to give such dispensations. To this he makes reply briefly, saying, "that when the jurisdiction is ordinary, it cannot become effete on account of its not having been exercised." And in the end, he concludes that although by the general practice of the Church, these dispensations have been reserved to the Pope, and so it is better to have recourse to Rome, he nevertheless dares not affirm "that dispensations granted by Bishops under such circumstances, would be absolutely null." There can be but little doubt that he who spoke thus, when the Recourse was *unimpeded*, would hold those dispensations to be valid, which the Bishops might grant when the Recourse was entirely stopped as it is at present.

Document 8.

Edmund Richer, Syndic and Doctor of the University of Paris, in his Hist. of Councils, Book iv. Part 2, Chap. 5, No. vii. "Seeing, therefore, that the Bishops derive their authority immediately from God, like the Pope himself, and that he has nothing superior to them, by Divine right, except the first place in the Priesthood and Ministerial power, certainly the Bishops cannot be deprived by any human law of that power which they have by Divine right, from God. And if at any time they have assented to this deprivation through violence offered to them, or through error, this assent is null by the Rule, "*Qui errat*

1 Gerbais, p. 412, Paris Ed. of 1679.

non consentit," and that sacred things, Divinely constituted, are not, like things temporal, owing to the length of time, to go by prescription to the usurpers. THEREFORE THE BISHOPS MAY, AS OFTEN AS THEY WILL, BE RESTORED TO THEIR ENTIRE POWER IF WE LOOK TO THE QUESTION OF RIGHT; and of violence and the actual fact, we are not disputing.[1]"

DOCUMENT 9.

The Practice of the Gallican Church during the great Schism, A.D. 1398.

In the year 1398, during the reign of Charles VI. the Prelates and Doctors of the Gallican Church assembled by the King's order at Paris, to discover some proper and effectual means for the extinction of the great schism which for twenty years had oppressed Christendom. Twelve Archbishops, sixty Bishops, seventy Abbats, the Rectors, Theologians, and Canonists of the Universities of Paris, Toulouse, Orleans, and Angers, were present, and out of three hundred votes, two hundred and forty-seven were in favour of the opinion that the best way to put an end to so fatal a schism was to withdraw from the obedience of both pretenders to the Papacy,[2] viz., Benedict and Boniface, and, whilst there was no undoubted Pope, that the Bishops of the Kingdom should provide spiritually, in all cases of necessity, for collations to benefices, elections, absolutions, dispensations, and all other matters hitherto reserved to the Apostolic See, as being, in default of the Pope, the legitimate judges and sacred Pastors of each Diocese. "In those cases which are reserved to the Lord Pontiff, absolution may be sought from the Bishop of the Diocese. As to Dispensations for marriages to be contracted within the degrees prohibited, if there is a serious necessity they also may be granted by the ordinary." The Kingdoms of England, Sicily, Jerusalem, Castille, Navarre, the Duke of Bavaria, the republic of Genoa, the Estates of Flanders, and the sacred College of Cardi-

[1] Richer, p. 94.

[2] Collection of Marteune, Pref. to vol vii. p. 54, Paris, 173.

nals, (*in number* 18,) followed the same course in imitation of France.[1]

In consequence of this resolution, the most Christian King caused it to be intimated through his Chancellor to all the Prelates assembled again in the palace, that it was his will and pleasure that the Gallican Church should enjoy fully all her ancient privileges, the Bishops acting in the stead of the Pope.

The Acts of this Council or Assembly at Paris, are contained in the fifteenth volume of the Collection of Coleti, (p. 1003, in the modern edition of Venice,) and in L' Enfant's Hist. of the Council of Pisa, Vol. i. p. 3. Pitheus gives the Royal decree relating to the withdrawal of obedience in the "*Proofs of the liberties of the Gallican Church*,[2]" Chap. 20, as also does Bulæus in his Hist. of the University of Paris, Vol. iv. (p. 853 in the Paris edition of 1668.)

In fact on the 8th of August, in the same year in which the Assembly was held, a Public Instrument was formally drawn up, which is quoted by Pitheus, where we read as follows: "Considering the withdrawal of all obedience lately made by the said Lord our King, and the Lords Prelates, and other persons aforesaid; and that the Churches and Monasteries of the said Kingdom being destitute of Pastors, may not, owing to the protracted vacation, suffer injury or loss; it was declared and ordained as follows, viz., that by the authority of this present Council which represents the whole Church of the said kingdom, the elections of all monasteries whatever, whether exempt or not exempt, when they become vacant, shall be confirmed by Lords Bishops of the Diocese, &c." And on the twelfth day of the same month and year, the Abbey of S. Denys being vacant, the Bishop of Paris confirmed the new Abbat, Philip de Villetta; and the Instrument relating to it, which Pitheus quotes, says thus: "Because the Supreme Pontiff, owing to the withdrawal of obedience, could not rightly confirm these proceedings, it is decreed by the counsel of men well skilled in the Divine and Canon Law, that this shall be done by the Bishop of the Diocese, &c. &c."

1 In iis casibus qui Domino Pontifici.—Dupin's Gersoniana, p. 14. Antwerp, 1702.

2 Proofs of the Liberties, &c., pp. 705, 707.

Document 10.

Continuation of the same course in France in 1408, together with the Articles discussed and agreed to in the National Council held by order of the same King Charles VI., at Paris, on the 22nd of October.

These Documents are given by Martene, vol. ii. of his *Anecdota*, p. 1398, Paris edition, and, in part, by D'Achery, in vol. i. of his *Spicilegium*, p. 800 (Paris edition, folio, A. D. 1723), by Coleti, vol. xv. of Councils (p. 1079, Venice edition of 1731), and by Pitheus long before them all, in his *Proofs of the Liberties of the Gallican Church*, p. 743.

"Advice concerning the method of governing of the Gallican Church during the neutrality, deliberated upon and concluded by the Synod of the said Church, held Oct. 22, A.D. 1408.[1]"

Of Sentences passed à Jure.

"And first of sins, and sentences passed *à Jure*, of which the absolution is reserved to the Apostolic See: in these the Penitentiary of the Apostolic See, *in foro conscientiæ*, may absolve both the exempt and not exempt."

"Also, if any one needing absolution shall, now or hereafter, have any perpetual or temporal impediment, or if perchance any cause arise, why he ought not to have recourse to the said Penitentiary, such a person, if not exempt, may be absolved by his own Bishop. . . . . But if he shall be exempt, and has a superior exercising Episcopal power over him, he may be absolved by him, but if he have not, by the Episcopal Ordinary."

"Also, if the sentence of excommunication have been passed by the Pope, whether he be exempt or not exempt, he may, during this period, be absolved by the Ordinary of the place, *in foro conscientiæ*, &c., &c.[2]"

"Of Dispensations to be Granted.

"Also, as to defect of age with regard to Holy Orders below the Episcopate, and with regard to dignities and benefices with cure of souls, below, however, the greater dignities in Cathedrals, let the Bishops dispense in case of graduates and nobles if only they be twelve years of age, &c.

[1] Martene, Anecdota, vol. ii. p. 1398. [2] Pitheus, p. 724.

"Also, as to defect in birth with respect to Holy Orders, dignities, &c., &c., it appears to be tolerated that Bishops for the good of the Church, should be able to dispense in the case of graduates and nobles, &c.

"Also, as to irregularity on account of the violation of Ecclesiastical censure, if only it was not done from contempt, let the Bishop dispense, &c.

"Also, with respect to impediments to marriage, as far as the fourth degree of consanguinity or affinity, if perchance the great advantage of the State shall call for a dispensation in the case of a King or Prince, then, cognizance of the affair having been first had, let the Provincial Council have authority to dispense in cases not forbidden by the Divine Law, even to the fourth degree, with those to whom it shall think good to grant a dispensation.

"Also, concerning impediments to marriage arising from spiritual relationship, &c. . . . . that the Provincial Council should have power to dispense, &c. . . . .

"Also, the Elections of Bishops may be rightly confirmed by their Archbishops, and the election of Archbishops by their Primates, if they have them, otherwise they may be confirmed by the suffragans assembled in a Provincial Synod."

The other articles may be seen in Pitheus, or in Martene. I will only remark that in consequence of this Assembly, the Metropolitans of France began to confirm the elections of their suffragans. Amongst others, Philip Archbishop of Lyons confirmed Louis Archbishop of Rouen, as we find in the *Gallia Christiana;* vol. iv. p. 174, and M. de Thou declares this to be the ordinary course in France during a rupture. "*Legitimum remedium in Scissura à majoribus nostris usurpari solitum.*"

Document 11.

Course pursued by the Church of Spain during the same Schism and neutrality in the year 1398, taken from the History of the cities and cathedral churches of Spain, by Gil Gonsalves Davila, treating of the Bishop of Salamanca Don Diogo de Annaya Maldonado, in Book iii., Chapter 2.

"In the year 1398, an illustrious assembly was held at

Alcalá de Henares, which was attended by all the Bishops of the dominions of Henry III., who was himself present. And in this assembly they renounced the obedience of Pope Benedict XIII., and agreed at the same time upon the plan to be pursued in these kingdoms, whilst no true Pontiff existed in the Church.

"First, it was resolved that all Benefices vacant, or which should become vacant in future, whether reserved or devolved [*devolutos*] or in whatever way vacated, shall be provided by the Archbishops and Bishops, as God shall give them understanding. Also that all persons excommunicated, by whatever judges or judgment, the absolution of whom belongs to the Apostolic See, shall be absolved by their Diocesans," &c.

"Also, that causes pending by reason of appeal, or in any other manner which affect the Diocesan, and suits against the Bishops, or against their affairs, let them be carried to the Archbishop, and if they affect the Archbishops let the matter be delegated to persons beyond suspicion, till three uniform decisions be obtained, and thenceforward let the question rest.

Document 12.

Decree of Henry III. King of Castille and Leon, passed December 12, 1398, in the presence of the Infant, Don Fernando, the Cardinal of Spain, the Archbishop of Toledo, the Master of the order of Santiago, and many other Grandees of the kingdom. Part of which is given by Raynaldus, continuation of Baronius, A.D. 1398, and the whole of it by Martene, in vol. vii. of the *Collection of Ancient Monuments.* (p. 613, of the Paris Edition of 1733.)

In this Decree the King, after enumerating the reasons which had led him to withdraw from the obedience of Benedict XIII., after commanding, in virtue of the advice which he had received from his Prelates and Doctors, that no vassal of his should have recourse to Rome in any matter spiritual and temporal, adds that all his vassals shall, during the interval, recognize the Archbishop and Bishops as their Pontiffs and Pastors. "We order further, that all and each of our subjects shall fully obey their Archbishops, Bishops, and other Prelates, regarding them as their true Pontiffs and Pastors."

Document 13.

At the General Council of Pisa, A.D. 1409, the true Pontiff Alexander V. ratified and confirmed all the dispensations, absolutions, and provisions made by the Bishops during the neutrality, declaring at the same time that it was not his intention to derogate in anything from the Articles agreed upon in the Assembly of the French clergy held in the preceding year, 1408. The whole may be seen in the Acts of the Council, Session twenty-two, in any of the Collections, also in Vol. vii. of Martene's Collection of Ancient Monuments, p. 1110, where however he attributes to the twenty-first Session what the others place in the twenty-second. The exact words of the Pope are these. "Per Præmissa seu aliquot præmissorum non intendimus derogare ordinationibus circa præmissos articulos factis in ultimâ congregatione prælatorum et aliorum virorum ecclesiasticorum factâ Parisiis.[1]"

Document 14.

The Treaty between Louis XII. of France, and Henry VIII. of England, (whilst the latter was still a Roman Catholic,) made in 1527, in which it was resolved that during the war which the Emperor Charles V. was waging in Italy, and the captivity of the Pope, all ecclesiastical affairs should be carried on by the Prelatic Ordinaries of both Kingdoms. See Pitheus, Proofs, Chap. 20, p. 778.

Document 15.

When the intercourse with Rome was stopped by the Italian wars, the Cardinal de Givry, Bishop of Langres, authorized, as Ordinary, the Bulls of Confirmation of the Abbat nominated to the monastery of the *Seven Fountains*, belonging to the Premonstratensians, Sept. 22, 1551. The words of the instrument given by Pitheus, p. 788, are as follows. "Since you were unable, on account of the difficulty of the times and the impediments of the roads, to obtain the expediting of your Bulls, and to send for them from the Roman Court itself, either so conveniently or so quickly as the necessity of the case required. We, as far as we lawfully can, and our episcopal authority permits,

1 Martene. Collection of Ancient Monuments, tom. vii. p. 1110.

commit to you the care and administration of the said monastery by these presents, &c. . . . ."

Document 16.

It was decided by the Court of Paris, July 27th, 1590, that seeing there existed no easy recourse to Rome, the *Visa* or attestation of the Archbishop of Tours should be valid in the place of that of the Bishop of Poictiers, the Ordinary of the place, it being required for the collation of Peter Jourdin to a benefice previously obtained at Rome *in forma dignum*.[1]

Document 17.

A decree made in the Parliament of Provence, Oct. 30, 1591, to the effect that the Chapter of the Cathedral of Sisteron should elect and appoint in the customary form, a Vicar-General to govern and administer that Diocese, in both temporal and spiritual matters, during the rebellion of the Bishop Antony de Coupes, declared guilty of treason.[2]

Document 18.

On the 5th of December in the following year, 1592, whilst the rupture still continued between the Kingdom of France and the Court of Rome, it was ordered by a decree of the French Court, passed at Chalons, that in consequence of the rebellion of the Bishops of Sens, Meaux, and Soissons, the Dean of the Bishop of Troyes, William de Tais, should collate to all the Benefices in the above Dioceses instead of the Bishops thereof.[3]"

Document 19.

In the year 1186, the Emperor Frederick I., provoked by the ill conduct of Pope Urban III. towards him, blocked up the passes of the Alps with his troops, and prohibited his subjects from holding any intercourse with Rome. At the same time determining that the Archbishop of Cologne, a Legate of the Pope, and Primate of Germany, should give sentence in all causes which should occur during the interval. Arnold de

[1] Proofs of the Liberties, p. 789.
[2] Proofs of the Liberties, p. 792.
[3] Proofs of the Liberties, p. 794.

Lubeck, Book iii. Chap. 17, of the Hist. of Sclavonia. "Fridericus I. videns Urbani III. obstinatum erga se animum, clausit omnes vias Alpium, et omnium circumquaque regionum, ut nemo pro quolibet negotio adire posset Sedem Apostolicam. Deinde convocavit Philippum Coloniensem, cui Papa Legationem Romanæ Ecclesiæ dederat, et Primatum, ut ipse, vice Apostolici, singulorum causas discuteret nec propterea magis ab Ecclesiâ Dei justitia deficeret."

Document 20.

In the National Council of Tours, held in 1510, and composed of all France, by order of Louis XII., the Prelates and Theologians drew up eight Articles, to the following effect: That supposing Pope Julius II. to declare himself the King's enemy, the latter, with all his kingdom, might withdraw, for a time, from all obedience to, and communication with Rome, and that in the interim, the Bishops should govern in spiritual matters: "according to the ancient common law, and the Pragmatic Sanction of the Kingdom." These Articles are contained in all the collections of Councils, and in Goldastus, vol. ii., pt. ii. p. 1651. Peter de Marca, also, mentions this Council in Book vi., Chapter xxxv., *de Concordiâ*, and Montfaucon in the Monuments of France, vol. iv. p. 117. No Pope has yet declared it to be a Pseudo-Council, although great efforts were made for that purpose in the fifth Lateran Council by the Emperor Maximilian, the rival of Louis XII.

The Acts of this illustrious Assembly are as follow:

"This Council was holden by order of King Louis XII.,[1] on occasion of the Italian wars between Julius and Alphonso, Duke of Ferrara, from whom he desired to take the duchy, although he was protected by the King and his army, on account of their relationship. But when Julius had anathematized the said Duke and all his adherents and abettors, and specially all those who fought in the French army, in order that the King might consult for his own against the Pontiff, who was evilly affected against him, and that he might both confirm his own soldiers and prevent the transmission of money from France to Rome, which would have been used against France, he commanded this Synod

[1] Collec. of Coleti, tom. xix. p. 557.

of the Gallican Church and of all the most learned men to be convoked, in which he proposed eight questions, of great moment, to the Fathers, in order that they might discuss and solve them. They are as follows, and referred to the difficulties of the times:

"1. Whether it is lawful for the Pope to make war on Temporal Princes, in lands which are not of the Patrimony of the Church?" It was unanimously answered, "*that the Pope neither can nor ought.*"

"2. Whether it is lawful for a Prince, defending himself or his, not only to repel with arms such an injury, but also to invade the lands of the Church in the possession of such a Pope notoriously his enemy, not with any intention of retaining them, but only to hinder lest the Pope, by means of them, should be made stronger and more powerful to injure the said Prince and his subjects?

"It was concluded by the Council that a Prince may do so, upon the conditions and qualifications stated in the Article.

"3. Whether on account of such notorious hatred and unjust aggression, it is lawful for such a Prince to withdraw from the obedience of such a Pontiff, it being moreover considered that the Pontiff hath stirred up other Princes and Communities, and hath even attempted to compel them, to invade the territories and dominions of the said Prince, who had rather deserved the benevolence of the Holy See.

"It was concluded that the Prince may so withdraw himself, yet not totally and without distinction, but only for the protection and defence of his temporal right.

"4. Such a withdrawal being lawfully made, what is to be done by the Prince and his subjects, and by the Prelates and Ecclesiastics of his kingdom, in those matters which were usually sought before, at the Court of Rome?

"It was concluded, THAT THE ANCIENT AND PRAGMATIC SANCTION OF THE KINGDOM, TAKEN FROM THE DECREES OF THE HOLY SYNOD OF BASLE, OUGHT TO BE OBSERVED.

"5. Whether it is lawful for such a Christian Prince to protect by arms, and defend, another Prince, his confederate, and whose protection he hath lawfully undertaken, &c.

"It was determined by the Council to be lawful.

"6. If the Pontiff shall claim some right as belonging to himself as part of the patrimony of the Holy Roman Church; and on the other hand, a Prince of the Empire shall say that it is part of his right, and that, in this controversy, he is ready and offers to abide by the will and judgment of good men, by compromise, as if of right: Whether in such a case it is lawful for the Pontiff, without any other cognizance of the cause, to make war upon the said Prince: and whether, if he should do so, it is lawful for the Prince to resist him by arms, and for other Princes to help him in this quarrel and to defend him, especially those who are connected with him by relationship or affinity, when, moreover, for the last one hundred years the Roman Church has not been in possession of the right claimed.

"It was determined that it is lawful for the Prince in such a case to resist, and for others to assist him in defending his right.

"7. Whether if the Pope refuses to accept what the Prince lawfully and honestly offers, but on the contrary without observing the order of law, shall pronounce sentence against the Prince, he is to be obeyed? especially when it is not safe for the said Prince to go, or to send to the Roman See, and defend his right in the way of civil law and by reason.

"It was concluded that the Prince is not bound to obey such a sentence.

"8. If the Pontiff, unjustly, not observing the due order of law, proceeding *de facto*, and with arms in hand, shall pronounce and publish any censures against Princes resisting him, and their subjects and confederates, whether he is to be obeyed and what remedy is to be applied?

"It was concluded unanimously by the Council, that such a sentence is null and not binding, either in law or in any other way."

DOCUMENT 21.

The Emperor Charles V. afforded it, when in the year 1526, advised no doubt by his Theologians, he broke with Pope Clement VII., as M. de Thou describes in the History of his times, Book i. p. 33.

"The Emperor Charles, to revenge the injury done to him by Clement VII., abolished the authority of the Pontifical name throughout Spain. An example being left by the Spaniards to

posterity, that Ecclesiastical discipline may be preserved for a time, without the authority of the Pontifical name."

Document 22.

The next document is afforded by the votes of the Universities of Spain and Flanders, which being consulted by Philip II., in the year 1556, as to the lawful mode of repelling the furious and daring policy of Pope Paul V. against his Crown, were of one accord in advising that his Majesty should break with the Pope, and command all Spaniards to leave Rome, and that in the mean time the Bishops should make provision in all things needful, 'even in those cases which by the law are reserved to the Pontiff.' Don Louis Cabrera relates the circumstances in his life of King Philip II., Book ii., Chapter 6, and they are quoted from him and not disapproved by our Leitão in his Analytical Treatise, Prop. v. Demonst. iv., p. 953.

[1] "The Pontiff showed himself as much as lay in his power, to be the enemy of the Catholic King, according to the account given by that Prince, to the Princess Doña Juana, Governess of the kingdoms of Spain, in a letter dated Brussels, the tenth of July, as follows :—

"'After what I wrote to you concerning the proceeding of the Pontiff, and the information received from Rome, the further intelligence has arrived that he is desirous of excommunicating my Lord the Emperor, and myself, and to lay an interdict and cessation *à divinis* upon our kingdoms and states.

"'Having communicated the case to learned and respectable men, their opinion is, that such notorious passion and rancour in the conduct of his Holiness towards us, is not only violence without foundation, but that we are freed from all obligation to obey him in this respect, on account of the grave scandal which would be caused by our declaring ourselves guilty when we are not so, thereby committing a grievous sin. Therefore it is resolved that I ought not to act as an excommunicated person, even though the censures, or some of them, should arrive, as there is no doubt will be the case, according to the intentions of

[1] This passage is given in the original Spanish, for the translation of which I am indebted to another hand.—Transl.

his Holiness. Because, although I have driven the heretics from this kingdom, and reduced it to the obedience of the Church, (which is always strengthened by the chastisement of heresy,) without the opposition which has been made in England, he has wished, and does wish, to disturb and ruin it, without having any regard to his own dignity. And he would undoubtedly accomplish his purpose, if we were to consent to it, as he has already revoked all the legations which Cardinal Pole held in this kingdom, and which had yielded so much benefit. For all these and many other sufficient causes, for the timely prevention of what may happen, and for the further security and satisfaction of the people, there has been made in the name of her Majesty and my own, a formal refusal, protestation and reply, of which I wished to send a copy by this post, but as the papers are voluminous, and also because they must go by way of France, this is impossible; they shall however shortly be sent by sea. I shall then write to the Prelates, Grandees, Cities, Universities, and Heads of Orders in these kingdoms, that they may know what has been done, as I have taken an opinion concerning the course which I may and ought to pursue; and you will send to desire them to execute no interdict nor suspension, nor any other censures whatsoever, all such being invalid, null, unjust and groundless. If, in the meanwhile, there should by chance come anything touching this matter from Rome, it is fitting that measures be taken for the non-observance of it. And that we may not be obliged to such an extreme measure, commands must be issued agreeably to what we have written, that great care be taken at the ports by land and sea, that nothing be notified and declared; which is likewise our endeavour here, and that great and exemplary punishment be inflicted on the bearers of such declarations, since there is no longer any time for dissimulation. If they do not succeed in apprehending these persons (as may be the case,) and if any one be found willing to employ the said censures, let measures be taken that they be not obeyed. Since I am determined upon this course of action, and with good reason and justice. Let the same be observed in the kingdoms of Arragon: write to them that they conform to these orders. It was afterwards known that in the Bull published on Holy Thursday, the Pontiff excommunicated all those

who had taken or possessed lands of the Church, even though they were Kings or Emperors; and that on Good Friday, he ordered the omission of the prayer for his Majesty, although the subsequent prayers are for Indians, Moors, Heretics, and Schismatics.

"'So that worse may be every day expected, and therefore there is so much the greater reason for acting as has been abovesaid concerning these matters, and information of this circumstance shall be given to his Imperial Majesty."

He wrote also to Padre Melchior Cano, a Dominican of singular piety and learning, whose council and replies he received as from an oracle.

The differences which there had been in divers assemblies with Paul being communicated to him, he answered, "That he should do wrong in not remedying these injuries and disgraces done towards his kingdoms, which, out of reverence for his oath in the name of GOD, it was his duty to defend from whosoever might seek to injure them, as a guardian, by the laws of faithful guardianship, acts towards his wards, even against their natural father, because the fear of inconvenience and scandal ceases when the cause of defence is just: that it was fortunate that he had come into the world in a time of heresy, since he possessed courage and power for the protection and guardianship of his dominions, and authority to perform his office, and that his failing to do so, would not be imputed to Christian meekness and piety, but to weakness. That if he were known to be of poor courage, and also of small power at Rome, the Heretics and Catholics would proceed to more extravagant mutual recriminations, and thus it was necessary to defend the Church, and to remedy the evils, because the advantage of neglecting to do so would be doubtful, and on the other hand, an incredible evil would be the certain consequence. And as we ought not to wait until he who bends the bow shoots the arrow, it was enough that the Pontiff had assembled an army by means of which he was able to assume a menacing position, to render it lawful for him who was thus wrongfully attacked, to take up arms. The beginning and breaking out of a war was judged, both by reason and justice, to resemble violence done to a private individual, in which case the person offended might always attack

the man who persists in attacking him, without being obliged to wait further orders; nor could an attack be regarded as censurable, although it should even proceed to a battle, since one might justly take up arms to defend one's-self and one's possessions. And that such a war was not to be considered as implying any guilt in the person making the attack, (who was not culpable,) but it should be regarded as a just and necessary *act of defence*. That if it were necessary to attack the enemy in order to obtain peace, (which is the object of war) to do so, became an act of intrepidity and courage, and both by reason and the Divine Law, no longer a heinous action, since God Himself encouraged His people and gave them laws concerning fighting justly, and counsel as to whom they should attack. Wherefore to attack the enemy was a necessary act and *might* be even *holy*, being permitted both by the Civil and Common Law, as well as the Canon Law, which shows that in every case an enemy might be attacked, as such, since if to make war and maintain it, through necessity, were regarded as a virtue and exercise of fortitude, fighting and assailing were also acts of the same. That in a combat in the lists, the person challenged might, through the necessity of defending himself, begin the fight and assail the challenger before the latter attacked him. That vengeance taken on account of injury and violence, if taken with a right intention, was lawful, and when executed by a Prince for a public cause, was called charity, for he was then the minister of God, an avenger against evil-doers.

"That His Majesty should treat immediately concerning the means, (consulting soldiers and not literary persons,) of chastising the injustice done him, by force of arms, recovering all the expenses from the Pontiff and his vassals; but that he ought to take heed to the fact, that the person chastised is our father and superior, the Vicar of God, representing the person of Jesus Christ, and that if he were ill-treated, it would open a door for the reproach of the Catholic Faith, and to the contempt of Ecclesiastical authority. That wise Kings would avail themselves of this punishment to obtain some desirable, just, and holy objects, so that he should not be treated disrespectfully, but only be warned and amended. Such would it be to obtain at the settlement of affairs, when making peace, that all the

Benefices of Spain should be patrimonial; that there should be a tribunal of His Holiness in Spain, for the decision of ordinary causes without going to Rome; where those only would be sent (if reason and the Gospel were regarded,) which are of the gravest importance to the Church, as the Pontiff Innocent confessed, in the Chapter *Majores de Baptismo;* and as other Pontiffs, and Councils also, have similarly avowed; and that, further, the goods and rents of the vacant Sees of these Kingdoms, and the mortuary gifts, should not be taken away as formerly. Thus the King Don Alphonso the Wise, who conquered Almeria in 1293, granted to the church of Oviedo, the goods of her deceased Bishops, and the King Don Alphonso VII., and Constance his wife, had previously made a donation of them, and then they enjoyed the tenths. Furthermore, that the Nuncio should despatch business gratuitously, as in France, or at least with the Assessor nominated by the King, having a moderate salary, not exceeding a convenient maintenance. That the Prelates and merchants of these kingdoms should be ordered to leave Rome.

"UPON THE BREAKING OUT OF WAR, THERE WAS AN ESTABLISHED RULE IN THE CANON LAW, THAT WHEN THERE IS ANY DANGER, IMPEDIMENT, OR DELAY IN THE RECOURSE TO ROME, THE BISHOPS MAY PROVIDE IN THEIR RESPECTIVE BISHOPRICS FOR THE PROPER ECCLESIASTICAL GOVERNMENT AND SALVATION OF SOULS, (EVEN IN THOSE CAUSES WHICH ARE RESERVED, OF RIGHT, TO THE PONTIFF,) ON ACCOUNT OF IMMINENT NECESSITY. IF HE DESIRE TO PRESERVE HIS ROYAL AUTHORITY FREE AND INDEPENDENT, LET HIM GIVE UP THE SUBSIDIES OF THE CHURCH, AND HER MINISTERS WOULD PRESENTLY LOOK UP TO HIM, AND HIS ESTATES WOULD GIVE HIM MORE THAN THE COURT OF ROME WOULD GRANT."

The Kings, Parliaments, and Bishops of France frequently adopted and put in practice this doctrine of the great Cano, in the numerous cases of rupture which that Court had with the Court of Rome, in the time of the Henrys II., III., and IV., as may be seen in tom. x. of the "Memoirs of the Clergy of France," printed at Paris in the year 1722, from pp. 555 to 572.

RECAPITULATION

OF THE WHOLE WORK.

All that has been said or proved in the two Parts of this work, from the Holy Scriptures, Councils, Fathers, Theologians, and Canonists, may be reduced to these heads:—

1. That the Episcopal authority and jurisdiction considered in its institution by Christ, is in itself absolute and unlimited for the order of each Diocese.

2. That the Bishops maintained themselves in the exercise of this absolute and unlimited jurisdiction, for many ages, dispensing even with the laws of General Councils and Pontiffs whenever the necessities or advantage of their people required it, until little by little the Apostolical Reservations were introduced, but not without the opposition of many most illustrious and holy Bishops.

3. That when the Bishops consented to and suffered the Papal Reservations, it was upon condition that whenever Recourse to Rome was hindered in any way, without their fault, the original jurisdiction and authority which Christ annexed to their Order should return to them; and that without the consent of the Bishops themselves the Pope could not temporarily despoil them of

that jurisdiction and authority, much less for ever. Both because the Pope cannot, of his own mere will, deprive the Bishops of a power which CHRIST, and His Apostles, and the Church granted to them; and because the Pastoral Office, which, by Divine institution, is essential to the Bishops, does not allow that they should permit themselves to be despoiled, to the prejudice of their flocks, of that power which was given to them by CHRIST, for the sake of the flocks and not for the Pastors.

4. That recourse to the Apostolic See being now prevented, and that without any fault on the part of the Bishops of Portugal, and there being, as there is, so great and general a want of dispensations, especially for marriage, (without which heavy and urgent want, the Pope himself cannot dispense any more than the Bishops,) the Bishops may, and ought to, grant dispensations to their people, in the case of public impediments to marriage, and in all the other cases reserved to the Apostolic See, which cannot be delayed without spiritual loss and hurt.

5. That the Sovereign Pontiff neither can or ought to take it ill, if, when the Sheep of Portugal are thus cut off from recourse to the Supreme Pastor, without any fault of their own, the Bishops should supply his place as Ordinary Pastors, which by Divine right they are; who, in granting such dispensations, do not exercise any power or jurisdiction which is not contained in the limits marked out by CHRIST, when, in the institution and mission of the Apostles, He founded the Episcopal Order, and constituted His Successors (the Bishops,) absolute and supreme Stewards of all the Divine Mysteries, and Plenipotentiaries of His Church, to promote for the spiritual benefit of their flocks, without offence to the Primacy of S. Peter. Since this Primacy signifies no more with respect to the Episcopate than a superiority of inspection or superintendence over all the Bishops without at the same time violating the rights and privileges of any.

6. That in consequence of these doctrines, the Bishops in all Catholic countries have always re-assumed the ancient and primary authority of providing and dispensing generally, in all cases of urgent necessity, when by any accident their people were deprived of the power of recurring to Rome, and receiving the instructions of the Supreme Pastor, who is the Roman Pontiff.

S. Augustine upon Psalm xliv. 32, speaking of the Church, says, "Pro Apostolis constuti sunt Episcopi. Non ergo te putes desertam quia non vides Petrum, quia non vides Paulum, quia non vides illos per quos nata es. De prole tuâ tibi crevit paternitas."

7. Recourse to Rome being forbidden by Kings or Sovereign Princes, Bishops are not to investigate the justice of that prohibition; but to obey, and to provide for the spiritual necessities of their Dioceses.

8. The Pope hath no more right than any other Bishop to dispense without a just cause.

10. Our Bishops ought not to fear that the Pope should be offended at their granting dispensations. For the spirit of the Apostolic See and the whole Church is to concur in Episcopal dispensations, where they are founded on causes so urgent as in the present case.

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